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ABSTRACT

A guide to mediation program planning is presented for college campuses. The concept of a college mediation program is considered, along with issues of needs, benefits, program focus, and goals. Mediation is discussed in the context of the overall field of alternative dispute resolution and is distinguished from other forms of conflict resolution. Also examined are planning questions that arise once needs are understood and program goals are determined. Information is included that might be helpful in making decisions about program location on campus; mediator training, selection and evaluation; and case referral. Practical matters are also addressed, including obtaining support, funding, and referrals, and preparing for intake interviews and mediation sessions. Two major questions that affect program operations are also discussed: (1) the why, when, and what of program expansion; and (2) the legal issues involved in mediating disputes. The manual incorporates examples from mediation programs that vary in size, focus, or approach. A resource section provides a list of programs and materials for additional help. Case studies demonstrate a range of mediation uses and the way mediation works in practice. Forms for intake and trainee evaluation are provided, along with information on print and individual resources concerning mediation. (SW)

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A Guide to Creating Mediation Dispute Resolution Programs on College Campuses

HE019891

Kathryn Girard • Janet Rifkin • Annette Townley
Mediation Project • University of Massachusetts • Amherst

funded under a grant from the National Institute for Dispute Resolution

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PEACEFUL PERSUASION: A Guide to Creating Mediation Dispute Resolution Programs on College Campuses

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Janet Rifkin
Annette Townley

THE MEDIATION PROJECT AT THE UNIVERSITY OF MASSACHUSETTS/AMHERST
The National Institute for Dispute Resolution

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PREFACE

Since its inception, the Mediation Project at the University of Massachusetts has received a growing number of requests for assistance from other colleges and universities around the country. The requests have asked for conceptualization and implementational assistance. This manual is an attempt to respond systematically to this increasing demand, as well as an effort to stimulate more interest in mediation dispute resolution programs in campus settings. The experience at the University of Massachusetts/Amherst has convinced us that programs in mediation enhance the quality of life on campus and are of enormous value to the general field of higher education.

The development of the Mediation Project would not have been possible without the support of the following people, and I wish to record my appreciation of these individuals who have been so important in this process: Jane McCarthy, of the now defunct Center for Mediation in Higher Education in New York City, whose enthusiasm, ideas, and support kept me going in the early years. Dean William Field whose understanding of this University and enthusiasm for innovation were instrumental in the creation of the Project. Eileen Stewart whose energy as project coordinator and tolerance of my way of working are at the heart of the Mediation Project. Nancy Feeney, Kathy Grant, Della Rice, and Barbara Sullivan, our first mediation trainers, whose love of mediation and whose patience, optimism, and creative application of the community training model to our campus were essential to our getting started. To the past and present staff at the Mediation Project: Debby Lawrence-Riddell, Charles Vose, and Ann Taylor Gibson; and to the many student interns who have made everybody's life easier. Finally, I wish to especially acknowledge Kathryn Girard and Annette Townley whose commitment to and interest in mediation inspired their collaboration on this manual, and without whom this work would not have been produced.

Janet Rifkin

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We are grateful to those involved in mediation, both on our campus and on campuses and in community programs throughout the country, who so generously gave of their time and expertise through phone interviews and/or as reviewers of this manuscript: Joan Barth, Albie Davis, Mark Eckstein, Margaret Erikson, William Field, Mike Greenwald, Howard Gadlin, Margaret Herrmann, George Langeler, Maggie Morrison, Edith Primm, Shirley Quinn, Mary Rowe, Becky Sibley, Ann Taylor Gibson, and Robert Welch.

And finally, we are appreciative of the National Institute for Dispute Resolution for providing the financial support for the manual.

Kathryn Girard
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Annette Townley

I. MEDIATION: A BRIEF OVERVIEW

This chapter looks at mediation in the context of the overall field of alternative dispute resolution (ADR), specifically as applied to college and university campuses. It defines mediation in relation to ADR and addresses the question of why mediation is a preferred form of conflict resolution for a campus.

What Is Alternative Dispute Resolution?

The term ADR refers to ways of settling conflicts other than by adjudication. ADR encompasses a range of approaches: negotiation, conciliation, mediation, arbitration, and fact finding. All but negotiation use a neutral third party to help resolve the dispute, and all but arbitration leave the final resolution in the hands of the disputing parties. Since mediation is the focus of the manual, it is important to understand how mediation fits within the ADR framework. To begin, some brief definitions are needed.

ADR Approaches

Negotiation Voluntary problem solving and/or bargaining carried out directly between the disputing parties in order to reach a joint agreement on common concerns.

Conciliation Voluntary negotiation with the help of a third party who serves to bring the parties together to talk or who carries information between the parties.

Mediation Voluntary participation in a structured process where a neutral third party assists disputing parties in identifying and satisfying their interests relative to the dispute.

Fact Finding Investigation conducted by neutral third party which results in a recommended settlement.

Arbitration Voluntary or required participation in a process of explaining, presenting and justifying needs, interests, and/or positions which results in a binding or advisory settlement determined by a neutral third party.

Adjudication is formal, governed by rules or laws, and results in judgments handed down by a judge or jury and enforced by the state or institution. Formal disciplinary processes on campuses tend to be patterned on this judicial model. By contrast, all the various ADR approaches emphasize cooperation, direct involvement of the parties in decisions, and the reduction of tensions. But ADR approaches differ in: the use made of third parties; the extent to which they structure the communication between disputing parties; the level of disputant involvement in shaping the final resolution; and the interests being served. For example, in negotiation, the individuals' interests are the only ones involved and no third party is used. At the other end of the continuum is the fact-finder (or ombudsperson) whose mission is often defined as ensuring that the policies and practices of some larger body--state, institution, corporation--are fair and appropriate in design and application. Fact-finders go beyond the individual case to broader implications and remedies.

The ombudsperson is a good example of **formal** ADR which is being used on more and more campuses. By formal ADR we mean those ADR approaches that are specifically designated as required or as optional steps to adjudication in resolving conflicts. Many campuses also use ADR informally. The use of students as dorm advisors, where students serve as conciliators in student disputes and function as a first, informal step in resolving student conflicts, is a good example. By informal ADR we mean those ADR approaches that are used by friends, colleagues, co-workers, or supervisors to resolve conflicts before they escalate. Conciliation and negotiation operate in all social and work settings as part of informal conflict resolution processes. On many campuses deans act as conciliators, as well as problem-solvers, in disputes between and among students, faculty, staff, or departments. The problem for many deans,

of course, is that they are often the rule-makers and judges in more formal judicial procedures. Responsibility for both the adjudicative and conciliatory processes can put a dean in an untenable position.

How Does Mediation Differ from Other Forms of Conflict Resolution?

Mediation is one of the fastest growing formal ADR programs in communities and on college and university campuses. The key element that distinguishes mediation from other methods of solving conflicts and disputes is the participation of a non-judgmental third party. In mediation, the mediator(s) acts as a guide in a voluntary collaborative process in which the disputants participate in cooperative problem solving to resolve their conflict. The parties cannot be forced to enter mediation or to reach an agreement, nor can the mediator impose a settlement on the parties. The end result of a successful mediation session is that there are neither winners nor losers, but rather, it is hoped, generally satisfied individuals who have through compromise arrived at an agreement which resolves their dispute **as they define it.**

At the core of mediation is the principle of a mediator acting as a facilitator. In court and arbitration investigations, evidence, arguments, and positions are weighed and a decision or recommendation is put forward by the third party. In mediation, it is the disputing parties themselves who have the primary responsibility for making recommendations and determining the final decisions; mediators do not make decisions or recommendations.

Mediators do not investigate, seek evidence, or attempt to determine who is right or what would be fair. Instead, mediators focus on helping disputants work together to identify common interests and to find mutually agreeable solutions. They encourage disputants to present what they see as the relevant information without the constraints of elaborate rules of "admissable evidence." Finally, mediators **do not have the power to enforce agreements** reached by disputants. While the courts and binding arbitration can lead to settlements that are enforceable, mediated agreements depend on the good faith of the disputants. For this reason, mediators can seek to help disputants obtain resolutions that truly meet their needs and that they can carry out.

While mediation may seem similar to problem solving, a common approach used on college and university campuses to resolve conflict, it differs in several ways. Where problem solving is usually an informal process, mediation is a formal, albeit a collaborative process. Where the person acting as a problem-solver with disputants often knows them or is familiar with the case, mediators are usually strangers to the parties in conflict and have been selected because they are not involved in the issue or with the parties.

To more fully understand how mediation differs from problem solving and other familiar forms of conflict resolution, it may help to look at the elements of the structured mediation process. There are five basic components, although not all mediation programs use all five.

Components of the Mediation Process

Intake	Disputing parties are separately informed about the mediation process and interviewed about the nature of the conflict so that a decision can be made by each party and the interviewer as to whether the conflict should be mediated.
Joint Sessions	Disputants provide information on the issues involved in the conflict and on their needs, concerns, and positions in the presence of the other party(s) and mediator(s).
Individual Sessions	Disputants meet individually with the mediator(s) to go over concerns, interests, and needs in more detail and without the presence of the other party(s).
Mediator Caucuses	The mediator(s) considers whether to use a joint or individual session, with whom to meet next, what information is needed, what should be shared, and in general, devises the strategy for the next session.

Agreement The mediator writes or verbally summarizes the agreement reached by the disputants.

Mediation has grown enormously over the past two decades. Although mediation and arbitration have been standard fare in labor relations since the growth of unions, mediation as an alternative to court adjudication did not begin until the 1960's despite Abraham Lincoln's advice to lawyers almost a century earlier: "...discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees, expenses and waste of time." The 1960's and early 1970's were a time of social unrest, a time of protests and confrontations, a time of organizing alternatives to established institutions--alternative schools, alternative technology, alternative food coops, alternative land trusts. Protesting injustices in the established order and cooperating to create smaller, more humane, and more conscious forms for educating people, growing food, and forming communities fed into the development of community-based mediation, an alternative to the expensive, time-consuming, and backlogged court system. By the late 1970's, Neighborhood Justice Centers existed in a half-dozen major cities. Today there are over 200 such centers and the number continues to grow.

Why Is Mediation the Preferred Alternative for Campus Disputes?

On campuses, one effect of the protests of the 60's and 70's was to make institutions sensitive to the legal rights of students. Disciplinary procedures became increasingly formal, concerned with due process and rule-oriented as they shaped themselves more and more after the courts in an effort to protect both the institution and the individual. As a result, some of the same problems associated with the courts can be found on many campuses. For example:

1. Defining disputes to fit within designated offenses can leave the real issues submerged and ignored.

2. Since the result will be judgment with sanctions imposed, complainants who must maintain social, work, or academic relationships with the offending parties may be reluctant to inform anyone of the problem, to testify, or to provide evidence.

3. Resolution in terms of winning or losing within the framework of the rules can lead to manipulation of the rules to win instead of an examination of the situation by all involved parties so as to understand responsibilities, fairness, and concerns from different perspectives. The educational value of resolving a conflict often gets lost.

Mediation offers colleges and universities an alternative to formal legalistic procedures for handling a wide range of conflicts involving students, staff, faculty, and community residents. On some campuses mediation has been incorporated into the disciplinary code as a first or optional step. On others, mediation is used to handle all disputes in certain categories such as landlord-tenant or roommate conflicts. At still others, mediation is a service offered to all members of the campus and the surrounding community. It may include family conflicts, divorce, assault--the full range of conflicts experienced by people living and working together and interacting as group members, consumers, co-workers, friends, and lovers.

It is difficult to overestimate the importance of acquiring a full and deep understanding of mediation whether one is preparing to become a mediator or preparing to initiate a program. It is not easy to readjust one's inner assumptions about how a dispute should be settled. Growing up with the idea that breaking the rules results in punishment, makes it very difficult to accept the notion that rule breaking can be resolved without punishment. If punishment for misdeeds is fair, then how can it be fair for there to be no punishment? If one is socialized to believe that disputes are settled by obtaining evidence that points to the truth of a situation, it is very difficult to accept fully a process in which evidence and objective truth are not the focus. In order to embrace mediation, one must give up judging. Giving up the notion of analyzing a dispute in terms of who is right and who is wrong is hard.

Mediation requires acceptance of certain assumptions about human nature and human beings: that there is a genuine desire to cooperate; that disputants know best how to resolve their own disputes; and that people can be trusted to negotiate in good faith. In educational settings, the goals and language speaking to trust, cooperation, learning, and growth as applied to students are often at variance with individual and institutional ways of actually dealing with students. A dispute resolution process that assumes a high level of trust in students may be consonant with rhetoric, but not with actual assumptions and institutional practice. When the institutional norm is to prescribe for students, to intervene, direct, solve, and discipline--mediation requires a major reorientation.

It is important to realize that mediation is not a total substitute for conventional conflict resolution mechanisms. It is not appropriate for all conflicts. Some disputes need to be dealt with publicly in order to develop or reinforce community standards on issues or behavior patterns. Others, by their nature, require a response that will deter others from similar action. However, mediation is useful when there is a need for a conflict resolution approach that may be less intimidating than the Dean of Students Office, when greater sensitivity to disputants' concerns than that afforded by evidentiary proceedings is sought, when one seeks to produce the feeling that grievances are actually heard, or when one wishes to empower disputants by enabling them to retain more control over the resolution of problems.

Mediation can be used in a variety of ways to handle a wide range of individual and social problems and needs as is illustrated in the case studies found in this manual. It can be incorporated into disciplinary codes as an option for handling specified code violations or it can be structured to handle student conflicts in which no code violations are involved. It's a useful intervention tool for short-term crises that over the long-term may require therapy. Or conversely, in a violent dispute, arrest may be used to control the immediate situation while mediation might be part of the longer range solution. In a broad context, mediation provides a forum for resolving any conflict involving personal, institutional, or policy differences.

Perhaps the best gift mediation has to offer educators is a model for promoting individuals' capacities and responsibilities for making decisions about their lives; for fostering mutual respect and cooperation; and for developing the use of fairness rather than power as a basis for resolving disputes. These are skills everyone needs in addressing the complexity of our individual and collective lives.

How to Use This Manual in Planning a Campus-based Program

The manual is intended to aid mediation program planning. It raises many of the questions that need to be addressed in shaping a mediation program to fit the needs of college and university campuses. Chapter II of the manual considers the concept of a mediation program within a college or university community and examines issues of needs, benefits, program focus, and goals. Chapter III addresses those planning questions that arise once needs are understood and program goals determined. This section presents information helpful in making decisions about program location on campus, mediator training, selection, and evaluation, and case referral. Chapter IV is concerned with practical matters of obtaining support, funding, and referrals, and preparing for intake interviews and mediation sessions. In chapter V two major questions that affect program operations are discussed. These are: 1) the why, when, and what of program expansion; and 2) the legal issues involved in mediating disputes.

The question of needs is introduced first because it is a touchstone of any planning activity and this manual follows a loosely deductive planning approach as depicted below:

However, real life frequently requires routes other than the most logical one. Thus, the manual is organized around planning questions so that it can be useful no matter where the planning process is begun. In truth, the relationships among all the parts are so strong, that no matter where one begins, one is drawn immediately into considering the other areas. Throughout the manual interconnecting decisions are highlighted.

As a guide to program planning using a decision making approach, the manual supports the idea that there is no one model for campus-based mediation programs. Although the manual is organized around planning questions, answers are not offered. Rather, the manual provides information and criteria that can be used in determining the answers to the various planning questions. For example, the Mediation Project at the University of Massachusetts/Amherst (UMass) uses a particular style of mediation and mediation training. It has worked well, but it might not be appropriate for all campuses. Hence, the manual presents criteria to use in selecting a mediation style and training approach, as well as information on several models. The intent is to aid in decision making so that each campus can shape a program to fit its needs, priorities, and community. It is not the intent of this manual to put forward a single model of campus-based mediation.

In this spirit, the manual incorporates examples from mediation programs whose size, focus, or approach differs from the UMass program. Also, the Resource Section provides a comprehensive and diverse list of programs and materials for additional help. The case studies presented in chapter VI demonstrate both the range of mediation uses and the way mediation works in practice. Anyone not familiar with mediation might want to begin with these case studies.

One final note concerns language. To overcome the bias inherent in the English generic pronouns, the manual uses three strategies. First, instead of the generic he or a cumbersome she/he, the chapters alternate using one of the pronouns for the general case. Second, words such as ombudsman have been modified to more inclusive forms such as ombudsperson. Third, their is used as a singular pronoun, a usage sanctioned by historical precedent, everyday usage, and a variety of keepers of the mother tongue.

II. HOW CAN A MEDIATION PROGRAM BENEFIT AND FIT INTO A COLLEGE OR UNIVERSITY COMMUNITY?

This chapter of the manual continues the exploration of the concept of an ADR program, particularly a mediation program, within a college or university community, and examines in detail the needs met and benefits afforded by the creation of such a program. In addition to outlining the needs mediation addresses, ways of determining a program's focus, priorities, and goals are also considered.

The Use of Mediation on Campus

When applied to higher education settings, ADR refers to those mechanisms for handling conflict other than formal judicial, grievance, or hearing board procedures. As suggested earlier, most ADR on campus has been limited to the **informal** approaches of facilitation, conciliation, and problem solving. Over the past decade, however, as ADR has grown as a respected adjunct to the courts and a valuable service to neighborhoods and communities, it has grown on campuses as well. The growth on campuses is reflected in the presence of Ombuds Offices, mediation services, or general dispute resolution programs, which in turn provide the **formal** ADR services--negotiation, arbitration, and/or mediation--and handle the following kinds of conflicts:

1. Those left unresolved through informal interventions.
2. Those appropriate for either informal ADR approaches or formal traditional means such as grievance or judicial systems because of:
   --preference of disputants
   --number of disputants
   --number or complexity of issues
   --insignficance of issue with respect to rules or codes

--location(s) of conflict
--issues of power imbalance and neutrality
--lack of evidence.

The most widely and frequently used ADR approach is mediation. While mediation dispute resolution programs may be asked to provide a range of services--training students and staff in negotiation skills, facilitating meetings involving controversial or divisive topics, or obtaining facts on issues in a dispute--mediating conflicts remains the primary service. Three key elements of mediation, along with its effectiveness as a teaching tool, make it the most useful new addition to the conflict management repertoire. These elements are: 1) the use of third party neutrals; 2) confidentiality; and 3) specific techniques to promote communication and resolution.

The following examples of cases reflect the range of conflicts and needs mediation can effectively handle and provide a framework for exploring mediation in more depth. These examples are not intended to demonstrate the processes by which disputes may be resolved; the case studies in chapter VI of this manual provide that information. Here, examples are given primarily to show the types of disputes that may fall within the purview of a mediation program. Six illustrative cases are provided: student/staff, town members/fraternity, student/student, staff/staff, student/faculty, and administration/employee group.

Student/Staff Case

A gay male student, named Jim, had taken some positive assertive steps in coming out to other students in his residence hall. However, the reactions of the other students in the hall were by no means totally positive and in fact, Jim was thinking of filing harassment charges against some of these students, all male. There had been no physical incidents up to this point, but there had been plenty of verbal insults and some snide anonymous notes concerning Jim's sexual preference. For a variety of reasons, including the fact that he did not seem to have a very good case as far as the university disciplinary system was concerned, Jim did not take out charges against the men he felt had harrassed him. Things were so bad, however, he decided unwillingly to move to another residence hall. While this situation was developing, Jim had consulted with

Paul Andrews, assistant director of residence halls. Paul was helpful, but according to Jim, was not very supportive when all was said and done. Jim wrote a letter of complaint to the director of residence halls and complained to other students about Paul. When Paul Andrews heard of Jim's actions he was infuriated.

The director of residence halls referred the case to the campus mediation program. Her reasoning was that the neutrality and objectivity which the program could provide were essential in resolving this situation and that she, as supervisor, could not provide it. On the one hand, Jim might feel that she would back her staff member and not listen to him; on the other hand, her staff member would expect her support against "unfounded complaints" of an angry student.

The case between Jim and Paul Andrews was successfully resolved through mediation. The agreement included:

1. A statement of support for the student by the staff member.
2. A promise by the staff member to help the student with some specific educational activities around homophobia/heterosexism.
3. A promise by each party to be clearer in their communications.
4. A formal apology by the student to the staff person for his remarks about him.

In this case the neutral and non-judgmental presence of the mediators enabled the conflict to be resolved. Administrative actions are necessarily rule-bound and hierarchical, and the administrator in this case realized that she could not provide or would not be perceived as providing the support to both parties which they felt they needed. Because mediation acts outside the normal administrative procedures, Paul Andrews got a chance to express his anger and to personally explain his actions without worrying about how his actions and statements would be interpreted by his boss. Jim got a personal affirmation from Paul, and the institution got a chance, through the staff member's promise of help with educational activities, to take action against harrassment of gay students.

Town Members/Fraternity Case

Mary and Paul Pratt recently moved into a neighborhood in which a fraternity was located. Previously, they had lived in the country, but decided to move into town because their child would be entering school in the fall and they were impressed with the local school system. They found the street on which they lived quiet and friendly, but when the college students returned to the fraternity in the fall, the tone of the neighborhood began to change. On weekends beer cans were strewn on the street and loud music was a common occurrence. One Saturday night their child, Anne, was sick and the music was disturbing her. They called the campus police and were told it would be taken care of; however, the situation became worse as the fraternity members strolled down the street drinking and singing. Mary became very angry and went out on the porch and told the students to get away from the house. A verbal fight ensued. Meanwhile, Paul called the campus police again. The police came and told the boys to get back to the fraternity house which they did. Things seemed to settle down.

The next morning Mary and Paul found the windshield of their car smashed in. They called the town police explaining what had happened the night before and expressed their belief that fraternity members had broken the windshield of their car. The town police referred them to the campus police. Because there was no evidence, the campus police felt there really wasn't anything they could do.

Mary and Paul felt angry and frustrated. They decided to call the college's Dean of Students Office feeling that office should be responsible for students' behavior. Again, because there was no evidence tying the fraternity or an individual to the incident, the Dean of Students Office felt it wasn't an appropriate case for the college judicial system. However, the office suggested that they might want to go to the mediation program with representatives of the fraternity to try to resolve the tension. The Dean's Office said they would ask the program to contact the fraternity to indicate that there seemed to be a problem. Seeing no other alternative, the Pratts decided to try this suggestion.

Although the Pratts did not receive compensation for their windshield, they and the fraternity students were able to arrive at an agreement which included:

1. A promise by the fraternity not to leave beer cans around the neighborhood.
2. A promise by the fraternity to try to be considerate about the playing of music.
3. A promise by the Pratts to contact the fraternity directly if they were having a problem.

In this case, the mediation program provided a recourse when it appeared none was available. It helped to create an atmosphere for dialogue and further communication. Most important, it was the college that provided a forum for the Pratts to resolve a conflict that, in their minds, was connected to the college. If this siutuation had been settled in the college's judiciary system or the courts, the end result would probably have been in the fraternity's favor due to the lack of evidence, and the future relationship between the Pratts and the fraternity would most likely have been a hostile one.

Student/Student Case

Kathy, who was white and a returning sophomore, had requested a single. Because she had to work twenty hours a week and carry a full academic load she wanted to live in as quiet an environment as possible. To get a single, Kathy had to transfer to a dorm in which she didn't know anyone.

Andrea and Paula were black women who lived next door to Kathy. They were active in campus politics, and their room was often a hub of activity with people from both the dorm and outside the dorm participating in frequent meetings. Kathy had been finding it difficult to concentrate when the meetings, which often turn heated, were held. Three weeks ago she left a note for Andrea and Paula asking them to move their meetings to the lounge, but nothing came of it.

Last week Kathy had a big test coming up and again there was a meeting going on. She felt the noise was intolerable and went to find the resident advisor or head of residence who she hoped would break up the meeting. The resident advisor was out and the head of residence was in a meeting so Kathy called up a couple of her friends to complain. They told her they would be right over to take care of the situation. When they arrived they said, "those people have

no right using their room for meetings. They have plenty of other places to go like the Afro-Am building. Besides, dorms are for living and studying and not for plotting a black revolution." At that point Kathy was exhausted from working and studying, and her only aim was to get the people out of Andrea and Paula's room. Her friends suggested they they call the campus police with a disturbing the peace complaint.

The police arrived and knocked on Andrea and Paula's door telling them of the call. An ethnically diverse group of people looked at the police in shock and anger. The police sensed the situation was not what was presented and said a few words about keeping it down and left. Paula, Andrea, and some of their friends went next door and a verbal fight took place. The head of residence was alerted and after an hour she was able to quiet things down. However, since there were still many unresolved issues, she referred them to the mediation project.

At the end of the mediation process there was still some tension between Kathy and Andrea and Paula, but they all felt that with time the agreement they reached would help to dissolve the tension. Among the points written into the agreement were:

1. A schedule would be set up so that Kathy would go to the library to study at times that meetings were planned to be held.
2. That whenever possible meetings would be held when Kathy was working or at class so as to minimize the need for Kathy to always go to the library.
3. When impromptu gatherings were held, Kathy would be told and if possible the meeting would be moved to the lounge.
4. An apology by Kathy and her friends to Paula and Andrea for the call to the campus police and for their underlying racist assumptions.
5. An attempt on both parties' part to make some personal contact with each other.

This experience allowed these students to find a resolution to their own conflict, one that they could live with rather than one they felt imposed upon them. It also opened up a channel for communication and understanding among people from different cultural backgrounds, an important part of the educational system.

Staff/Staff Case

Bob, the supervisor of a small administrative office on campus recently decided to sell his old car so that he could buy a new one. While he didn't want to put any more money into it, he felt the car would provide good reliable transportation for someone willing to do the repairs that an 8 year old vehicle would need. He let his office staff know that the car was for sale in case they had friends who might be interested in a good used car.

One of the newer typists in his office responded enthusiastically, test drove it, and asked Bob some questions about its repair record and current condition. Satisfied that the car was in good shape and that the price was a bargain, Helen bought Bob's car.

When Helen took the car for the required state inspection, she found that two new tires were needed. Helen bought the new tires. When Helen told her co-workers this they sympathized and one mentioned that she thought Helen had legal grounds for getting Bob to pay for the tires. Her closest friends in the office advised her not to say anything since she would need Bob's recommendation for a promotion to Betty's position when Betty retired in another 6 months.

Two weeks later, driving to work, the car died. A major transmission job was required and the estimate was over $400. At this point Helen began implying to her co-workers that Bob had been dishonest in describing the car's condition. Again, there was the suggestion that if he weren't her boss she could take him to court. Two co-workers suggested that maybe it was Helen's fault for not checking out the car thoroughly. The argument became polarized and the staff became quite divided. While productivity remained fairly even, morale dropped.

When word finally got to Bob he was furious that Helen had been saying that he was dishonest. He called Helen in to tell her that he was upset with her behavior and to suggest that she bring her complaints to him directly.

The interview did not go well as Helen and her friends thought Bob was using his authority to keep Helen from talking about what he had done.

Bob went to his supervisor and asked for help. His supervisor suggested that since the problem had to do with a personal matter, Bob should try to get the conflict mediated.

The case between Bob and Helen was mediated and the agreement included:

1. Bob would pay the cost of the two new tires.
2. Helen would apologize to Bob for talking about him behind his back and for thinking he had been dishonest.
3. Helen would speak to her co-workers about Bob's willingness to be fair in dealing about the car.
4. Both parties acknowledged that the transmission problem could not have been anticipated.

Mediation was effective in part because it was conducted in an atmosphere of impartiality due to the fact that the mediators knew neither Bob nor Helen and that they had no connection to their office. Also, by using various mediation techniques the mediators helped to diminish the role differences between Bob and Helen so that they could discuss and resolve the dispute as equals rather than as employee and boss.

Student/Faculty Case

Susan was in the Ph.D. program in English and had just completed her comprehensive exams. Due to a job offer in another part of the country, she had given herself six months to write her dissertation. Her committee and the chair of the committee had agreed to this schedule. The area in which she was working was a highly specialized field and required frequent consultations with Professor John Sterling, the chair of the committee. Susan chose John because of his expertise in the subject matter.

Recently, unbeknownst to Susan, John had separated from his wife. When Susan met with John to arrange a meeting schedule, John mentioned that they might have to have a dinner meeting in town occasionally because of scheduling problems created by the accelerated timetable for her dissertation.

They did meet once for dinner, but then John began asking Susan to his house for dinner. Susan was not comfortable with this arrangement, particularly since she had just learned of his separation. She told John that she would prefer to keep the meetings during office hours. He responded by saying that it had become impossible for him to meet with her during the day and that she would have to come to his home. Susan felt he was forcing her to make the relationship more personal than she wanted and she told John of her discomfort. He became indignant and angry and informed her that he was just trying to accommodate her ridiculous schedule. Susan soon realized that there was no reasoning with him and decided to take the situation to the mediation program.

Susan and John did not come to an agreeement on the intent of John's invitations but they were able, through mediation, to arrive at a clear definition of their working relationship. This included:

1. Regularly scheduled meetings during office hours.
2. An acknowledgment by Susan of how valuable John's contributions have been to her work.
3. An effort to diminish the overload for John by finding another committee member to share responsibility for overseeing Susan's dissertation.

Mediation was able to provide a neutral non-judgmental forum that defused the power imbalance between Susan and John; focused on Susan's dissertation; and recognized the value of their relationship.

Administrative/Employee Group Case

With the national attention on hazardous materials, the college administration had begun to investigate their use on campus. They quickly discovered that the lining of many of the pipes contained asbestos. The administration realized it would be critical to hold educational programs on the dangers of working with this material because the campus plumbers' normal activities involved working with asbestos. Lectures and workshops emphasizing the development and implementation of proper procedures for handling asbestos were schedu[illegible]. Workers received time with pay to attend.

However, when the plumbers became aware of the dangers they informed the administration that they no longer would perform jobs that required working with asbestos. The college was upset by this response for they felt they had acted in good faith and in return the information was being used against them. As far as the plumbers were concerned, working with hazardous materials was outside their job description. The administration's position was that handling asbestos was part of the job of being a plumber.

There was a stalemate and the administration and union asked the mediation program to help them in resolving this complicated problem. Despite its complexity, the issues were resolved after a lengthy process. The outcome included the following points:

1. The college would provide new and specialized equipment that would significantly reduce the risks of working with asbestos.
2. Jobs involving asbestos would command a higher pay rate.
3. Working on jobs involving asbestos would be voluntary.

Mediation afforded the college the opportunity to settle the conflict in-house; saved them from a potentially complex law suit which would have been costly for all parties involved; and eliminated the need for and likelihood of numerous individual grievances which would have been time consuming for all parties and which might have undermined the plumbers' bargaining position as a united group.

What Are the Needs and Benefits That Mediation Addresses?

It is helpful to look at the needs of students, staff, administrators, and community residents in order to establish a framework for understanding the benefits of campus-based mediation programs. For each of these groups, the typical conflicts that can emerge; the usual avenues available for dealing with these conflicts; the limitations of these choices; and the advantages mediation has to offer will be highlighted.

Students

Students, especially undergraduates, experience a great deal of conflict as they learn to live independently of their parents and with a heterogeneous group of peers. Conflict is essentially a fact of life for most students. They experience the daily problems of living and working together. They experience interactions with people who are different from themselves and perhaps different in race, culture, sexual preference, ethnicity, and/or religion from people they have known before: fears rooted in their stereotypes and fears of confronting those stereotypes may surface. They face personality conflicts and conflicts stemming from testing boundaries and learning the real meaning of independence and personal and group responsibility. They test drinking, smoking, drugs, and sex as a way of learning--often through conflict--what is acceptable behavior for themselves and for others. They face conflicts with landlords, merchants, and roommates that arise from errors in managing finances. And in the academic realm, they find out whether their standards for work are acceptable--both in content and in honesty.

In all these categories, students learn how to handle conflict from the institution and from their peers. Since few 18 year olds have developed good conflict resolution skills, using each other as models of how to manage and solve conflicts is often ineffective. As a result, the ways an **institution** handles conflict must serve not only to maintain rules and order, but also to teach conflict resolution. This means that institutions must examine their approaches to preventing serious conflict, handling conflict, and maintaining order in terms of the skills and concepts being taught and learned through those approaches. Each campus must ensure that the institutional approaches introduced to students are congruent with the developmental, situational, and educational needs of students and with the institution's educational goals.

Generally, there are several typical approaches to handling conflict on college campuses. They may vary depending on the size of the institution, but some, if not all, can be found even at the smallest college. Dorm personnel--resident advisors, counselors, or heads of residences--often try to conciliate interpersonal or group conflicts that are not serious enough to warrant campus or legal charges. If conciliation fails at this level, the conflict may be moved up. Deans of

students are often the next in line to have conflicts brought to them for conciliation or problem solving.

In addition to these informal methods, most campuses have some form of judicial process which includes specified charges, decisions, and sanctions. For serious offenses, actual criminal or civil charges may be brought and pursued in the local courts. Finally, there often is a special means for handling academic honor code violations--most typically some committee or board that deals only with such cases.

These mechanisms can be effective in many ways and they do provide some institutional flexibility. However, there are some problems with these avenues:

1. Conciliation depends on dorm personnel having the skills and time to bring disputing parties together.

2. Problems that are too small for the campus judicial system may fall through the cracks if there is no one with the time and skills to initiate conciliation or to assist in problem solving.

3. When conflicts are unobserved by supervising adults, even serious disputes can go unattended because students do not like to turn each other in, especially if they are turning in peers to an "authority" with the power to judge and punish.

4. Students who live off-campus typically lack impartial intermediaries able to observe conflicts and intervene before they escalate.

5. Judicial codes on campuses are rule-oriented as they reflect the formal law model. This process can teach the game of winning in an adversarial arena: students may learn ways of getting off, how to win, how to use technicalities, etc., but learn little about fairness and how to avoid or handle future conflicts more effectively.

6. As students try to determine socially appropriate limits for their behavior, a punishment-control system may lead to confusion between socially responsible and legally allowable behavior. From this confusion comes the assumption that if a behavior is not technically illegal, it's okay.

7. There is often a high rate of conflict that doesn't reach the formal disciplinary or legal system until a level of overt criminal behavior is reached. Typically, assault and theft are behaviors that may escalate in this manner.

8. Campus related cases can overload a local court system. For example, the UMass Department of Public Safety referred over 240 criminal cases to the local court in one year. Those cases combined with other University related cased picked up by outside police agencies formed a substantial part of the court's caseload.

9. Disciplinary and legal processes run the risk of not getting to the root of a problem. A case where a student is charged with harassment, for example, may never deal with the underlying issues that need to be resolved or negotiated so that future conflict may be avoided, prevented, or understood.

10. Since many conflicts occur between individuals or groups where relationships are on-going, it makes sense to learn from our legal system the limits of adjudication in such disputes. Many courts, police departments, and district attorneys are now referring to mediation cases involving on-going relationships. These kinds of disputes are often exacerbated by the formal legal process and can be better served by an alternative means which takes into account the relationship between the parties and the likelihood that the dispute is symptomatic of a deeper problem.

Mediation contributes to meeting students' needs in two ways: 1) it compensates for some of the problems arising from the usual combination of formal judicial and informal alternative dispute resolution processes; and 2) it directly teaches students how to handle conflicts more effectively. For example, mediation offers:

1. **A structured forum where students learn to confront and to be confronted in a positive way.** The example of the case between Kathy, Andrea, and Paula demonstrates this. In some circumstances this type of conflict might have been productively resolved at

the dorm or dean of students level. However, as a teaching vehicle, mediation has the advantage of not coercing resolution through authority.

2. **Opportunities for students to practice taking control of a conflict without having to turn in another student.**

3. **Opportunity for the issues underlying the symptoms of a conflict to be examined without the restrictions of a judicial proceeding.**

4. **Opportunity to learn to take responsibility for one's actions.** Punishment through a disciplinary system may teach students not to do certain things, but mediation teaches the effect of behaviors on others and emphasizes personal responsibility for restitution and future peace.

Staff

Mediation serves those who staff a college's offices and support programs in two ways. First, it provides additional resources for handling conflicts that are brought to them--whether those conflicts involve students, community members, or supervisees. Second, it provides resources for resolving conflicts in which they become involved.

As a resource for handling conflict, a mediation program directly aids dormitory staff. First, referring conflicts frees valuable staff time for working on educational programs. Second, over time the pattern of referring conflict can alleviate some of the overload caused by the multiple roles of educator, bureaucrat (key counter, form filer, etc.), and "cop" that most dorm personnel must assume. As students first observe and then learn both the practice of referring disputes to a netural, non-authority forum and the actual mediation and negotiation skills, they are able to do more effective self and peer intervention and referral.

Staff in supervisory positions in other sectors also benefit from having the option of referring cases to mediation. Many supervisors lack the skills, experience, or temperament to conciliate or otherwise assist in resolving conflicts brought to them. This is especially true when the conflicts are interpersonal in nature.

For dorm staff and supervisors in any department, handling conflict **between** their students or employees--whether directly or through referral--goes with the territory. However, staff in many services and offices often become aware of conflicts in which they cannot intervene. For example, counselors may find themselves trying to help students deal with interpersonal conflicts by strengthening the students' ego, clarity, or assertiveness. But, without access to the other party, the conflict may remain a source of stress for their clients. Likewise, Employee Assistance Programs may often hear of conflicts that need both parties involved to reach resolution. (Employee Assistance Programs have been set up on many campuses to help employees with problems that affect their work. Stress, addiction, and financial management are common areas of concern.) Because of the confidential nature of their work and the limitation of their mission, they have no mechanism for creating a neutral forum. The availability of mediation as a formally structured neutral process within the institution, offers such a forum.

Campus security personnel may also find that the option of a referral to a mediation program provides them with useful flexibility. Public safety or security personnel are often called in instances where there is nothing they can do until the problem escalates and becomes more serious. Typically, there is no avenue for referral which might prevent this escalation. The case of the Pratts and the fraternity provides an example of one aspect of the problem. The experiments with Neighborhood Justice Centers obtaining referrals directly from the police, who refer to mediation instead of writing up charges, suggests the model for linking campus security and mediation programs.

Special student services, like women's centers, may hear of conflicts or complaints but lack the authority to investigate or pursue. For example, a women's center may hear allegations of discrimination that are difficult to substantiate but involve on-going stress for the person involved. Where a pattern of rights violation is not suspected, such a conflict could be appropriately referred to a mediation program.

As a resource for handling conflicts in which staff are personally involved, mediation meets several needs. Generally, conflicts between staff smolder, get conciliated, or are moved up to the next level of supervision for resolution.

These avenues are often inadequate due to people's unwillingness to let others in the same system, especially those in the same supervisory chain, know about all the problems. And supervisors are often inappropriate or ineffective due to: 1) the actual or perceived neutrality of the supervisor; 2) concerns about confidentiality and the impact revealing oneself may have on future actions of the supervisor; 3) power and authority imbalances; and 4) the skills and temperament of the supervisor. Too, an informal handling of the case by a supervisor may lead to the expectation that the supervisor will "solve" the conflict and then enforce the solution, which in turn can lead to new conflict between the supervisor and employees. Finally, if a conflict arises between an employee and a supervisor, neither may find the supervisor's boss to be the appropriate party for helping to resolve the issue.

The potential benefits for staff people who are trying to assist others engaged in conflicts in which they are not able to intervene or who are themselves engaged in disputes with co-workers or supervisors should be clear: mediation offers neutrality, flexibility, and a better use of supervisors' time.

Administrators

Mediation meets four important needs for most administrators on university and college campuses. They are needs that when addressed directly, benefit the administrator and the institution: 1) the need to advance actively the educational mission of the institution through institutional practices; 2) the need for efficient use of staff time; 3) the need to use their own time efficiently; and 4) the need to maintain good relationships among individuals and groups on campus and between the institution and the local community. Mediation also contributes to the achievement of two goals held by most administrators: the **internal resolution** of conflicts and the **retention** of students.

While the academic curriculum of an institution has the primary responsibility for meeting the institution's educational goals, most colleges and universities see as part of their mission, enabling students to learn to take responsibility and to solve problems. Since the process of going to college is as major a learning opportunity as any set of courses, it is important to consider what students learn by engaging in campus disciplinary systems. As suggested earlier,

most disciplinary systems are based on our society's judicial system, and the problems with it as a learning tool are clear: it teaches an adversarial process in which winning or minimizing punishment is the goal; it teaches how to manipulate technicalities; it does **not** teach fairness, honesty, or the taking of personal responsibility for the effects of one's behavior; it does not teach how to deal with others so as to prevent major conflict in the future.

Disciplinary systems modeled on judicial processes serve some very important purposes, but when they are the major or only vehicle for non-criminal conflicts that cannot be resolved by conciliation, their educational value is questionable. Mediation offers administrators an addition to their disciplinary process which not only increases the **flexibility** of the system, but also advances the larger educational purposes of the institution. Educational research indicates quite clearly that positive behaviors are acquired not by punishment of undesired behaviors, but by such things as the reinforcement of desired behavior and opportunities to practice new and desired behaviors.

Another need faced by most administrators is that of improving staff efficiency. As budgets shrink (due to actual cuts or inflation) while program and service goals and demands remain constant or increase, staff efficiency becomes critical. In certain areas, such as residential life, staff often spend a great deal of time handling conflict. The time spent intervening in, conciliating, or problem solving disputes is often unplanned and unanticipated. And the amount of time spent in such reactive activity is usually inversely related to the amount of time available to be spent in planning, implementing, and evaluating programs. If handling conflict is the primary responsibility of dorm staff, then this situation is not a problem. However, when there are competing job demands, mediation offers a means of freeing staff time for other activities.

Of course, dorm personnel are not the only staff to deal with conflict either as part of their job or as part of their work environment. As noted previously, conflict intrudes into most work areas. Unless there are ways of dealing with it effectively, it can erode both morale and productivity. Most campuses do not have mechanisms for dealing with staff conflicts that are not job or contract related. Since conciliation by a supervisor or administrator can be problematic, as in the case between Helen and Bob, it is to administrators' advantage to

have a neutral forum to which they can encourage their staff to take disputes.

There are three points that need to be emphasized here. First, the costs of not having a forum for dealing with employee-employee conflicts are hidden, but they are there in the form of employee turnover, subtle sabotage, and low productivity. Second, many complaints can be handled more effectively and efficiently through mediation than through grievance procedures. For example, the plumbers in the hypothetical case might have decided individually to initiate grievance procedures and to force the issue to arbitration, a costly process in terms of time and money. The availability of an alternative forum for airing and resolving concerns may be highly cost-effective to the institution. Finally, there are conflicts that have no place to go on most campuses--at least not until they escalate into bigger problems. A typical example is the supervisor hearing second-hand that an employee is talking negatively about the supervisor or the office. Loyalty is not an explicit part of most job descriptions and personnel and grievance structures are not organized to handle such problems until the supervisor finds a way to get back at the employee--usually through performance review reports--and the employee files a grievance. Mediation is well suited to handle such conflict anomalies.

When conflicts surface but cannot be resolved, they are moved up to the next level. As a result of this process, more and more "conflicts" walk through administrators' doors or those of their key staff. Some administrators enjoy helping people solve problems: they're good at it and it provides a satisfying break from regular demands. Others may enjoy it less or be less effective, but stick with it because theirs is the last door. In either case, conflict resolution takes **time.**

If an administrator's primary responsibility is to be a conflict manager, then this use of his time may be appropriate. But in many instances, administrators feel their skills and time would be better spent dealing with other tasks. Mediation gives administrators a means to regain more control over their time. This is not to say that with a mediation program on campus, an administrator would stop all problem solving and conciliation activity. Rather, administrators would have a real option for referring a dispute without escalating its seriousness or increasing its visibility.

In their report, "Resolving Student Initiated Grievances in Higher Education," Folger and Shubert identify the preserving or restoring of collegial relationships among disputing parties as an important criterion in designing grievance procedures. They note that two aspects of dispute resolution procedures which work to promote collegial relationships despite conflicts are: 1) procedural informality; and 2) shared participation in constructing the resolution. Mediation allows for the clarification of issues in a private setting thus reducing the potential for public exposure of the dispute and public postures on issues and demands. And, by guiding disputing parties to find their own mutually agreeable resolution, the parties experience (or re-experience) their ability to work together. This has an important effect on reducing the tensions that often persist even after a dispute has been settled.

While not all administrators have responsibility for maintaining a good institutional relationship with the local community, many do. Mediation can assist in maintaining positive relationships in two major ways. First, as suggested by the case with the fraternity and the Pratt family, a mediation program offers a forum that community residents and business people can use when they are involved in disputes with students, college groups, or organizations or other members of the campus. Second, and this may affect only large institutions, mediation may help to keep students out of the local courts--either as defendants or as plaintiffs bringing charges against the institution.

Resolving issues internally may be desirable on both philosophical and practical grounds. On the philosophical level, the goal of resolving conflicts in-house may express the institution's belief in its duty to protect the rights of its members from unfair institutional or individual policies and practices. Separately, or concurrently, there may be a practical desire to avoid the potential costs, interference, and publicity of court cases. Internal adjuciation and mediation have each worked on many campuses as the means of resolving conflicts within the institution. The suggestion here is that the flexibility afforded by having **both** routes available for dealing with disputes makes successful resolution more likely.

While there is no documentation of a direct relationship between the successful resolution of student conflicts and student retention, it does seem clear that

administrators need to be aware of major sources of students' problems and dissatisfactions. Procedures that enable students to express and resolve their conflicts and dissatisfactions are more likely to benefit the institution as well as the student. Procedures that lead to the suppression of students' grievances are more likely to encourage the growth of problems that can increase attrition. Mediation lends itself to supporting the airing of grievances that need to be resolved. Folger and Shubert found in their study, of 20 colleges and universities, that mediators addressed a much wider range of student issues than did other dispute resolvers. Mediators also responded to more cases than hearing panels or those adjuciating disputes. Thus, mediation may offer a broader focus which can provide a larger and more diverse base from which to examine institutional practice.

Community Residents

Mediation programs on campus provide a place where complaints stemming from the intersection of the college or university and the local community such as adjacent neighborhoods, landlords of students, and merchants with student accounts can be handled. Generally, there is no forum for resolution of these kinds of disputes except through the police and the courts. Again, mediation enables the institution to be responsive to the local community's needs and interests, without jeopardizing student needs and interests. A good example of a mediation program serving one of these intersection points quite well can be found at the University of Michigan where landlords who wish to list available housing through the University's Housing Office must first sign an agreement that they will bring any disputes with student tenants to mediation.

Some campus mediation programs, such as the UMass Mediation Project, offer mediation to community residents for any dispute, not only those that are campus related. This type of program may provide services such as trained mediators to assist community agencies with specific issues; mediation of neighbor, family, and couple disputes; and taking court and DA referrals. Through these services a mediation program builds good will, introduces residents

to the campus in a positive way, and serves a general mission of community service, a mission held by many private and public institutions of higher education.

As has been illustrated, the range of needs addressed by mediation are varied and extensive. It's important to do a careful assessment of the campus' needs before choosing the population(s)--students, staff, student tenants, community residents--on whom the program will focus. Contacting various administrative and student resources and, if appropriate, court and community resources, for their perspective on needs, provides a solid foundation for making this decision.

What Should Be the Focus and Goals of a Mediation Program?

Obviously, the goals developed for a program must be closely related to the chosen focus. A universal goal for most programs is the reduction of tension and conflict on campus. But beyond that what are the priorities? Is there a need to facilitate communication and understanding among the different social, cultural, and economic segments of the campus? Is it important for community residents to feel that the institution is responsive to their particular needs and problems? Is there interest in handling on campus some of the student violations that end up in court?

Some campuses, such as UMass, have chosen to create a mediation program that will meet educational and direct service needs for all groups. The UMass program provides both direct services and training opportunities for students, faculty, staff, administrators, and community residents. It has a court referral program and, having recently worked with some local school-based conflicts, it will be setting up a program in conjunction with a school system. The mediation project handles two-party interpersonal disputes and multi-party inter-organizational and inter-group conflicts. It is a model of a multi-faceted comprehensive program.

Other campuses, such as the University of Michigan and the University of New Hampshire, have chosen to focus on a single conflict area or a single population. The University of Michigan's program handles only tenant-landlord disputes. As a focused program meeting a clear and specific need, it has been

very successful. The University of New Hampshire's mediation program began with a focus on housing disputes and is now planning expansion into other areas based on their program's success.

Success can come with either a broad or narrow focus. There is no one best model. Each has certain advantages and disadvantages:

ADVANTAGES OF BROADLY FOCUSED PROGRAM

- Opportunity to meet institutional community-service goals.
- Opportunity to provide training in mediation skills to people at all levels and in all sectors of the institution.
- Flexibility in program focus allowing for changes in response to changing conditions and needs within the institution.
- Opportunity for research and contributions to the field of mediation or ADR.
- Ability to attract and maintain volunteer mediators' interests due to the varying nature of disputes handled.

DISADVANTAGES OF A BROADLY FOCUSED PROGRAM

- Requires a large pool of mediators.
- Demands enormous outreach and education as part of case development.
- Makes the establishment of credibility more difficult.
- Requires greater resources.

ADVANTAGES OF A NARROWLY FOCUSED PROGRAM

- Ability to monitor and document the actual effect of the program on a group or conflict area.
- Opportunity to institutionalize the use of mediation in specified circumstances.
- Opportunity to maximize the impact of resources.
- Case development is easier.

DISADVANTAGES OF A NARROWLY FOCUSED PROGRAM

- Impedes expansion due to identification with one conflict area or group.
- Makes it difficult to maintain interest of volunteer mediators over time.
- Results in lack of cases if focus is not well chosen.

Determining how broad or narrow the focus and goals of a program are to be comes back to the assessment of the institution's needs. For example, including community residents may not make sense for a small private institution without an emphasis on public service. If few students live off-campus, landlord-tenant disputes may not make an appropriate focus. Within the institution as a whole, where conflict resolution mechanisms are generally working well, the developing of a mediation component may be in the context of "fitting" within the existing system. A goal here might be to aid students learning about conflict resolution. By contrast, where there are problems with existing disputes resolution systems, the development of a mediation program may serve as the basis for reviewing the entire system. The mediation program here may have an explicit goal of promoting institutional change.

In determining the focus and goals of a program, the most important information comes from the specific institution. A program targeted at the specific needs of its institution will succeed. The time spent analyzing and discussing needs with those representing different departments, groups, and administrative perspectives will pay off later in case referrals and in external perceptions of the program's credibility.

These choices are the seeds for all future decisions including location, networking, case development, and funding. The next chapter will begin to explore these and other issues that arise in planning a mediation dispute resolution program.

III. WHAT NEEDS TO BE CONSIDERED IN PLANNING A MEDIATION PROGRAM?

This chapter of the manual addresses planning questions that follow from the delineation of needs and goals. Elements considered in this section are location, training, mediator selection and evaluation, and case referral. While decisions about needs and goals provide general direction for the program, decisions about each of the areas just mentioned determine the specific nature and type of mediation service to be offered. Chapter IV will then address those decisions which affect the details of actual program operation.

The focus here is on the following **planning** questions:

1. Where should a program be **located administratively** and **physically?**
2. How does one select a **mediation model** and obtain **training**?
3. How are **mediators selected**?
4. How can **mediators** be **evaluated**?
5. What **kinds** of **cases** should be taken?
6. How will **cases** be **referred**?

As in the previous section, the manual offers guidelines and considerations for answering these questions rather than specific "best" answers. The field is still too new to provide defensible "best" solutions and finding answers specific to each campus will most likely lead to effective programs for each campus.

Program Location

In this section, program location is being considered broadly in the sense of "fit"--where it fits structurally and physically on campus and how it fits

with or relates to other programs on the campus and in the community. The concrete aspects of administrative and physical location are examined first, followed by an exploration of the more fluid dimension of establishing relationships.

Where Should a Program Be Located, Administratively and Physically?

The question of where to locate within a college's or university's structure is a difficult one, but the following considerations may be useful when dealing with the issue:

1. Population served
2. Perceived impartiality
3. Referrals
4. Other conflict resolution and disciplinary systems
5. Financial support
6. Academic component
7. Credibility
8. Political implications

Each of the above considerations speaks to the matter of location—location within the administrative structure, physical location, or location based on association stemming from financial or other support. Although they are discussed separately, it is important to note the ways in which these considerations are interwoven.

Population

In planning a program there is the option of selecting a single special group (e.g., students living in dormitories), a single broad population (e.g., all students), or any combination of target groups (e.g., students, staff, and community residents). The more specialized the target population, the easier it is to select an appropriate location that will support perceived impartiality, credibility, and referrals. Usually the organizational division that one population will see as fair or "for

them" can be identified. Finding the unit that will be seen as appropriate and/or neutral by students, staff, and community people is hard and requires careful analysis and assessment.

When multiple populations are to be served, physical distance from the single administrative unit to which the program is accountable may be important. In other words, when locating within the organizational division creates a problem in perceived impartiality, it may be best to obtain space in a neutral part of campus rather than in the administration building. For example, if a program were accountable to the Dean of Students Office, but intended to serve faculty and staff, as well as students, it might be important to have an office which by physical location de-emphasized the student-oriented administrative line of accountability.

Initially, the UMass Mediation Project had hoped to locate in the Ombuds Office, which is a respected and well-integrated part of the University structure and is located in a building used by all segments of the campus and the local community as well. Ultimately, the program was housed in a building with classrooms, some science and computer labs, and the parking office. It is a centrally located "neutral building," thus meeting some, if not all, criteria. Knowing the ideal location, and the specific conditions that make it ideal, can be useful in negotiating for actual space. Since space is a scarce resource on most campuses, having clear programmatic bases for location requests can be important in coming up with necessary, but viable compromises.

Perceived Impartiality

As suggested above, the location selected for a program can greatly alter perceptions of a program's neutrality and impartiality. If there have been recent conflicts between students and the Dean of Students Office over political or student rights issues, and students are the primary population to be served, it may be a good idea to avoid connecting the program administratively to the Dean's Office.

The UMass Mediation Project has received substantial encouragement from the University's chancellor from the beginning. That support was very important and the Project's funding continues to come in part from that office. However,

conflicts between the chancellor and the faculty at the time negatively affected faculty perceptions of whose needs the mediation program served, who controlled it, and how impartial it was.

In thinking through the question of location and impartiality, it may be helpful to identify for each target group all possible positive and negative administrative and physical locations. Such a grid, as shown in the example on page 39 may help you to make a thorough analysis.

Referrals

Getting referrals probably depends more on choices between institutionalized and informal referral processes, established relationships, educational activities and publicity and less on where a program fits into the institution's structure. However, it may be useful to seek a location that will make it easier to reinforce referral, build the relationships, and conduct the educational and PR activities that will increase case referrals. A location that by its visibility and centrality or proximity to other frequently used services can also be beneficial in leading to cases.

Other Conflict Resolution and Disciplinary Systems

If students are the program's primary focus, an association between mediation and the disciplinary process could be explored. Oberlin College, for example, runs a mediation project in conjunction with its judicial system: mediation is an optional step in the disciplinary process and is administered by the judicial coordinator. If student attitudes toward the judicial system were negative, then such an association would need to be avoided. Mediation might be a recommended option within the disciplinary system, but its coordination would be divorced from the administration of the judicial process.

Some campuses provide an ombudsperson to investigate the facts and make recommendations in a wide range of disputes. For example, on the UMass campus, the Ombuds Office has handled disputes between departments, sexual harassment cases, faculty-student conflicts, and complaints about the policies and practices of various campus offices and programs. On the UMass campus,

ADMINISTRATIVE LOCATIONS

Populations Served	Student Serv.	Pres. Office	Acad. Affairs	Counseling Ctr.
Students	+	*	–	*
Prof. Staff	–	+	+	*
Faculty	–	*	+	*
Union Employees	*	–	*	*
Administrators	*	+	+	*
Community Residents	*	*	*	*

+ good
* neutral
- negative

as on others, the Ombuds Office is generally seen as fair and impartial. Association with an existing part of a conflict resolution system, such as an Ombuds Office, could be desirable and complementary for most campus mediation programs.

Financial Support

A program's funding source may determine the administrative and physical location. In doing so, it may also determine credibility, perceived neutrality, and the number and types of cases that will be referred. In light of this, it may be best to begin the process of seeking financial support by determining the best source(s) on campus given the population(s) to be served and the likelihood of referrals.

Mediation programs may be funded from many different budgetary units: Presidents' or Chancellors' Offices, Personnel Offices, Student Governments, Student Affairs, Counseling Centers, Off-Campus Housing, and Student Activities. Where multiple populations are to be served, multiple funding sources may be appropriate. Where this is possible, some of the problems of close association with one target group may be avoided.

Academic Component

This is a fairly straightforward consideration, one that becomes more important in considering **who** runs the program. If a program is to have an academic component--that is, curriculum development, course offerings, student internships--the program should be located within the institution's structure so as to have academic credibility and access to academic processes for course approval, internship approval, etc. At UMass, the Mediation Project is directed by a faculty member. This academic affiliation not only influenced location but was essential to the initial support and continued funding of the program.

Credibility

This is the matter of whether a program's location suggests to the potential clients that the issues of their dispute will be understood. A mediation program located within a dorm might create a great deal of credibility among the student population, but would probably not gain respect and trust as a forum for faculty and staff concerns. Clearly, it is important to establish a program in a place that creates an atmosphere of acceptability and trust for those whom it intends to serve and for those on whom it relies for referrals. Programs have made

very different choices. Consider the range encompassed by the following institutions:

ORGANIZATIONAL LOCATIONS

College/University	Organizational Location	Physical Location
University of Maryland	Counseling Center	Counseling Center
Texas A & M University	Student Affairs	Off-Campus Housing, Student Activities, Resident Hall Area Offices
Wellesley College	Dean of Students	Student Activities
Oberlin College	Dean of Students	Office of Residential Life & Services
University of Michigan	Off-Campus Housing	Off-Campus Housing
University of Massachusetts	Dean of Students, Chancellor's Office, Legal Studies	Classroom building

Although in many cases the actual mediation session takes place in the physical location designated, the initial intake session may be done in a variety of offices on campus such as Affirmative Action, Student Affairs, and the dorms. The choice of intake location, then, can also influence credibility.

Another way of resolving the credibility dilemma, particularly if a program serves several populations and expects a large case load, is to set up mediation offices throughout a campus. This is a model that some Neighborhood Justice Centers have used successfully in communities. Assuming the program is designed to serve both students and staff, offices in a dorm and an administrative building

may be appropriate. Take the case between Helen and Bob. If a mediation board existed in the Personnel Office and Helen was informed of its purpose and intent when hired, she might have thought of asking Bob to use this mechanism before the situation became an office issue.

Political Implications

Anyone who has ever started a program or introduced a change in an established institution knows that there are political implications associated with each step. Since location is a concrete expression of territory--expansion, power, status, and "place"—it raises political considerations such as: Will a program be seen as encroaching on someone's territory--budgetary or physical; Will it be seen as having usurped someone else's prerogative? For example, if a mediation program is set up within student services, is there a Law School or Labor Relations Program that will feel a mediation program should be under their supervision or initiated at their discretion? Obviously, the more awareness there is about who is already involved in some way with mediation and who may feel threatened by an actual loss of space or by a perceived loss of responsibility, the more possible it is to take these concerns into account in making decisions about support building activities and location.

Mediation in Relation to Other Campus-based Services and Programs

To gain the support of the administration, familiarity with other campus offices involved in conflict resolution and disciplinary action is essential. For instance, on many college campuses, the Office of Greek Affairs might have intervened in the situation between the Pratts and the fraternity prior to it becoming a major conflict. Usually this office is concerned about the relationship between fraternities and townspeople. If there had been tension between these two groups the previous year, they might have held an open meeting in the fall between townspeople and fraternities to discuss what these two populations viewed as the issues and to encourage everyone to think systemically about these issues. Where a program exists to handle certain types of problems, it makes sense to involve them in discussions about needs

and goals and to identify ways in which a mediation program might complement that program's work. Given increasingly limited budgets, avoiding unnecessary program and service duplication is essential. Knowing the relationship of mediation to existing offices and programs is important in establishing an institutional rationale for budgetary support.

In exploring a program's relationship to other campus offices, an alliance that might be useful to investigate is one with an academic department. The activism of the late 60's and early 70's helped to initiate the emergence of Peace and Conflict Studies in the United States. For example, programs at Syracuse University and Kent State initially focused on social change theory, history, and methods. But as this theoretical interest expanded into the field of conflict resolution, these programs began to branch out into the study, research, and training in conflict resolution. Other academic departments moved into this field because of other concerns. For instance, the University of Massachusetts Legal Studies Department, an undergraduate law program, was very interested in the establishment of a mediation project on campus because of their interest in exploring alternatives to the adversary process. To date, the growth of the Mediation Project has been coupled with the development of curriculum materials related to mediation; workshops throughout the campus and larger community which look at mediation in a broader theoretical context; and a commitment to developing a coherent curriculum base about mediation and conflict resolution in general. Such an alliance may also be useful in justifying financial support.

Many campuses have Legal Services Offices which need to be considered for potential support or conflict. Usually, these services are for students only and they take the form of offering advice, representation, and/or referral in most legal matters. Because students tend to have fewer resources and less power than the college or university, Legal Services Offices tend to be protective of and concerned about students' rights, especially their right to due process. From this perspective such offices may be concerned that mediation threatens or erodes students' rights to due process. It is important to work with lawyers serving students to ensure that their concerns are addressed, and to build an alliance based on shared concerns.

As noted previously, mediation grew out of a desire to build an alternative justice system and has grown most dramatically through court-affiliated programs. This raises the provocative consideration of affiliating a campus-based program with the courts. The University of Massachusetts began with this as a model, but ended up working solely on non-court related campus and community disputes for the first few years. Now, however, there is a special court referral program located on campus and in the court building. The location on campus obviously needs to allow easy access if a court or community focus is to be incorporated. Court referral programs tend to have larger case loads, assuming there is trust and credibility with the appropriate referral sources. Joint financial support from both the college and the court or from state programs also becomes possible.

Regardless of what focus and location is chosen for a program, some outreach to off-campus groups probably makes sense. Since students may have conflicts with townspeople or be arrested by the local police or otherwise engage in minor disputes that end up in the local court, considering inclusion of disputes involving off-campus parties may be important. If it is decided to include such disputes or to specifically serve community or court needs and to solicit referrals from these groups, it would be useful to make contact with local government officials, district attorneys, community social service agencies, court personnel, community mediation projects, and community residents.

Probably the best models for developing a working relationship with community groups are the Neighborhood Justice Centers and community mediation programs. They have successfully enlisted the support of mayors' offices, police departments, district attorneys' offices, lawyers, culturally diverse segments of the community, judges, clerks of court, and community agencies. The impact on case development is obvious and one which will be explored in-depth in chapter IV. However, these relationships were built **prior** to opening for operation and had a significant influence on location as well. Networking is beneficial whether you are strictly a campus-based program needing to connect to administrative, academic, residential, and student offices and organizations with some community outreach; or a multi-based program establishing links to the courts and community as well as campus offices.

How Does One Select a Mediation Model and Obtain Training?

In discussing training it is important to make the distinction between the content of the training and the form of the training. Content refers to the model used in mediation training. It includes decisions about the structure of a mediation session, mediator's style, techniques and skills used in a session, types of cases, and the philosophy of mediation as applied to an individual campus. Form refers to the way in which mediators will be trained. Factors to be considered are the length and pacing of the training; the inclusion of training of trainers; provisions for advanced as well as beginning training; and the use of role plays, written materials, and lectures. In the following discussion, both mediation model and training format considerations are explored separately and as they intersect.

What to Consider in Selecting a Mediation Model

As has been established, the underlying philosophy of mediation emphasizes de-escalation of tension between people and cooperative problem solving. However, the application of this philosophy varies from campus to campus and affects the choice of training model. For instance, if a mediation program is designed to serve community as well as campus, and views itself as an alternative to the adversarial process, which is oriented around two opposing parties, the program must be capable of managing multi-sided and often mutli-party conflicts. Usually, the disputants in these cases have on-going relationships; therefore, it would be important for the training to value and recognize that conflict is often set in a context of deep personal emotion that often is only ambiguously related to the immediate issues. If a program is linked to the Business School within a college, the philosophy might be informed by collective bargaining characteristics such as bi-polarity and the need to reach a settlement that takes the form of a written agreement which would require a training model compatible with this approach to conflict resolution. Perhaps a program is designed to focus solely on students, then choice in content of training might be determined by the belief that mediation is a vehicle for personal change with an emphasis on future behavior. These philosophical assumptions prescribe

the training model that best fits a campus's needs.

Mediation has some very definite parameters, particularly neutrality and impartiality. Nevertheless, there is great latitude in how a mediator facilitates communication and understanding between parties, which is accomplished by establishing the facts, isolating the real issues, stressing the potential of cooperation, and helping the parties to focus on mutual needs rather than unilateral gains. Every mediation model depends on four basic questions; options selected in each area determine the basic style of a mediator and the shape of a mediation session:

1. What will be the **structure**? Single, co-mediator, or panel model; joint session or joint and individual sessions; length and number of sessions.
2. What will be the mediator's **style**? Continuum between "bargaining" and "therapy."
3. What are the required **techniques and skills**? Language of neutrality; responsive communication skills; negotiation; creative problem solving; and facilitation.
4. What are the **types of cases** to be considered? Campus; community; family; court-referred; and public policy. Within those single party vs. multi-party.

Structure

The model that is most widely used on college campuses is that of co-mediators. This form provides educational opportunities for the mediators and disputants. Mediators learn cooperation and the art of team work. This makes the model particularly appealing for programs interested in training student mediators. In turn, this collaborative behavior provides a positive role-model for the disputants. Often there is a concerted effort to match mediator and disputant characteristics such as age, sex, and race. **Two** neutral third parties make such matching more feasible. Diversity is an important criteria particularly in multi-party disputes. These disputes also require great skill in managing complex views

and values and co-mediators usually prove more adept in this situation. Scheduling two mediators is obviously more difficult than one, and there is the possibility of personality and style conflicts between mediators; however, trade-offs are informed by the types of cases the program handles.

A single mediator format solves a couple of the problems presented by co-mediation: scheduling is much easier and the possibility of tension between mediators is eliminated. This design has been most successfully used by Ombuds Offices and by labor and government mediators. These mediators tend to be selected by disputants for their visibility, reputation, and credibility. Programs in which mediators are not known to the disputants and where identification between clients and mediators is important may be better served by at least two mediators. One person interventions are also limited in that there is no second person with whom the mediator can clarify complex and difficult issues, check out their perspective on the case, or explore alternative strategies for bringing the dispute to resolution.

The concept of mediator panels originated with the San Francisco Community Board program which uses five person panels drawn from the community to resolve disputes. This model underscores the advantages of a two-person design and the disadvantages of a one-person design. It offers: a substantial diversity of perspective and values thus creating a strong basis for trust; a demonstration of group collaboration; and the influence of peer pressure in moving disputants toward accepting responsibility for solving the situation. At the same time, it presents both administrative and group process problems. How does one handle scheduling five people for one evening? How large a mediator pool must one have so as not to overuse volunteer mediators? How does one minimize the potential of difficult interpersonal dynamics among the mediators?

Another factor to be considered in determining the structure of a session is the length of each session and the number of sessions per case. Typically single issue, two-party disputes can be mediated in a two to three hour period; however, some programs have found that using two separate sessions is useful because it gives people a chance to think about the questions raised, and to return with a clearer sense of the problem and a readiness to move toward

agreement. Three hours appears to be an outside limit for disputants' and mediators' concentration, focus, and stamina. Family conflicts with multiple issues and complex dynamics or large numbers of disputants may take multiple sessions. Environmental, interorganizational, and public policy disputes may take many months. There have been variations to the standard two-to-three-hour session within Neighborhood Justice Centers, with sessions being as short as thirty minutes. However, this does not seem to be a model used by campus programs.

The last consideration in selecting a structure for mediation is whether to use joint sessions exclusively or to combine them with individual sessions. A joint session gives the mediators an opportunity to discover the facts by having all the parties present and giving each person a chance to explain what brought them to mediation. Mediators use this time to build trust by listening carefully and well and to obtain information by asking neutral, clarifying questions. Individual sessions are used to further trust, to gain clarity on what each person wants, and to move the parties toward agreement. In individual sessions with each party, the mediator gathers more information and seeks to uncover discrepancies between a person's "public" position and their "real" one. By solely using the joint session, a mediator can reduce the time of meeting, gather subtle information through the continued interaction of the parties, and encourage the disputants to communicate directly. However, joint sessions may never allow room for disputants to moderate their positions, especially if there is substantial hostility, distrust, or a history of dispute between the parties. While incorporating the use of individual sessions can be time consuming and may reinforce polarization between the parties, the disadvantages of either joint and/or individual sessions may be balanced by using both. The disclosure of pertinent information, mediator control over the session, and the managing of emotional tension are advantageously resolved by this combination. Individual sessions allow disputants to share information they don't want the other party to hear and it gives the parties a chance to consider alternative solutions without the pressure of the other party's presence. It provides an opportunity for the mediators to remind each party of positive comments said by the other, as well as the ability to press a person on a particular issue in a way that would undermine neutrality if done

in a joint session. Thus, individual sessions can complement joint sessions.

In deciding what are the appropriate elements to integrate into a mediation structure, the goal is to provide a credible arena. The chosen framework should permit the mediators to identify the important issues of the dispute and to assist parties in constructing a workable resolution to the critical pieces of the dispute.

STRUCTURAL OPTIONS

Type of Decision	Issues to Think About
Single, Co, or Panel Mediator Model	Scheduling Role Models Trust Building Tension Between Mediators Managing Sessions
Length & Number of Sessions	Kind of Dispute Number of Disputants Relationship between Disputants
Joint vs. Joint & Individual Sessions	Time Tension between Parties Uncovering Information Getting Movement toward Agreement

Style

Sally Merry and Susan Silbey, both professors at Wellesley College, studied the range of styles used by mediators. They identified many styles on a continuum between "bargaining" and "therapy." At the "bargaining" end of the continuum,

one finds mediators who have a negative view of the legal system because it is costly, slow, and inaccessible. At the same time, people who use a bargaining method feel their authority rests in their expert understanding of the law and the court system. At the other end of the continuum, mediators with a "therapy" style view the legal system negatively because they believe that it deteriorates personal relationships. Those working in this mode see their authority residing in their expertise in managing personal relationships. Below are two charts listing the characteristics of each end of the continuum as identified by Merry and Silbey:

BARGAINING

- Purpose of mediation is to reach a settlement.
- Spends more time in individual sessions.
- Assumes parties know what they want.
- Focuses on demands that can be traded off.
- Assumes conflict is caused by differences of interests.
- Assumes settlement can be reached by trading off benefits.

THERAPY

- Purpose of mediation is to help parties reach their own settlement.
- Encourages direct communication between parties.
- Assumes parties do not always know what they want.
- Helps parties to define their real issues.
- Assumes the source of conflict is a result of misunderstanding or failure of communication.
- Emphasizes resolution of conflict through rational discussion and compromise.

As is apparent, the "bargaining" style is very rooted in a pragmatic positional-interest approach to conflict resolution, while the "therapy" approach is a much more personal one that seeks to discover common personal interests and values. Within the field of mediation, there are various combinations of these characteristics creating a variety of styles. What seems most important is identifying those qualities that would best serve the needs of the program's targeted population. For example, the case between the administration and the physical plant might be best served by a more "bargaining" approach to mediation, while the case between Kathy and Andrea and Paula, might be better handled by a more "therapeutic" approach. It might make sense to have mediators representing a variety of styles so a wide assortment of cases could be handled. Finally, it should also be noted that each mediator will contribute her own personal style: tone of voice, view of the world, physical conduct, and ethics, all of which will affect the shape of the process.

Techniques and Skills

Directly connected to style are the techniques and skills that are available to a mediator. Together these form the fabric of a session and are the keys to effectively guided mediation sessions. The most commonly taught skills and techniques are the language of neutrality, responsive communication, negotiation, creative problem solving, and facilitation. Each of these will be looked at briefly.

The **language of neutrality** helps to build trust. This is reflected in the mediator's choice of words, body language, and tone of voice. For example, if one of the mediators in the faculty/student case had begun the session by saying, "Susan, since you are the party being harassed, we will begin with you," John would most likely have felt that the mediator was biased and that he was being blamed for the problem. Neutral explanations such as, "We always begin with the person who contacted our office first," and neutral language such as, "Susan, can you tell us what has brought you here?" leave room for both parties to be heard. Moreover, by being non-judgmental, the mediator helps the parties to move away from their own blaming postures.

One of the most important **responsive communication skills** is active listening. The goal of active listening is to get the parties to talk by encouraging, restating, reflecting, and summarizing. Questioning techniques, such as open-ended questions designed to elicit an expansive answer, leading questions which allow for the reframing of issues and perspectives, and hypothetical questions which are used to press for movement are also key elements of responsive communication. Effective communication also assumes that mediators have the technical and practical information on how values and emotions operate in conflict situations to block effective communication.

Negotiation is one of the processes facilitated by the mediator to assist parties in resolving a dispute. Some training programs use the book *Getting to Yes* by Roger Fisher and William Ury, of the Harvard Negotiation Project, as the basis of their instruction in this area. Generally, this method involves deciding issues on their merits and looking for mutual gain through generating and evaluating alternatives and by bargaining over the acceptability of these options. This is not a technique currently being employed by the UMass Mediation

Project, but it is an approach the Project will be incorporating into its training, since a strict adherence to a non-suggestive mode is too limiting.

Creative problem solving is a method of thinking that leads to richer more interesting solutions. By developing a problem solving approach to mediation, the mediators are able to introduce the use of brainstorming, role reversal, and letting go of preconceived ways of thinking as tools to aid disputants transcend a fixed perspective on their situation. This technique is not one used extensively by UMass because of its directive nature, but it is successfully and frequently utilized by other programs.

Facilitation is a process used to guide the procedures a group uses to reach a goal of completing a task. Specifically geared for mediators, it gives them the skill to manage meetings as neutral parties. For instance, on the UMass campus, the Mediation Project has been called upon to facilitate a discussion on whether a product should be banned from sale on campus, a debate on Central America, and a panel discussion on the Middle East.

Although not all training programs offer this range of skill development, it would be important during the planning stage to discuss the merits of each skill in relation to program goals and needs.

Types of Cases

The final consideration in choosing a mediation model concerns the types of cases to be handled. Community, family, and public policy mediation differ sharply in their intensity, time frame, substance, emotional investment of the disputants, and interpersonal dynamics. Training must provide the mediators with the appropriate and specific techniques, skills, and information to competently and knowledgeably mediate such complex disputes. For instance, the American Bar Association has established standards for mediating divorce cases which should be an integral part of a family mediator's training. Programs that are interested in handling environmental disputes need to make sure that their mediators have a working knowledge of federal guidelines. And for projects linked to the courts, information about the local judicial system's hierarchy and procedures, as well as the limits of what can be included in an agreement, are essential in the training process.

What Should Be Considered in Selecting a Training Program?

Once a mediation model is selected, it is appropriate to seek an appropriate training program. Below are two checklists to aid in this process. The qualities listed are gathered from the experiences at UMass, our personal experiences as trainers and trainees, and from others in the field, particularly Peter S. Adler at the Neighborhood Justice Center in Honolulu.

WHAT TO LOOK FOR FROM THE TRAINERS

- Ability to adapt training to the needs of the planning/development group, particularly within a specific institutional context.
- Commitment to consult with the group prior to the actual training, so that the training program can be jointly developed.
- Willingness to help the group begin to anticipate the kinds of cases the program may have so that the role playing component of the training mirrors potential cases.
- Shared philosophical and political values with the hiring institution.
- Concrete ties between the institution and trainers; e.g., if a program is part of a state institution, politically, it might make sense to hire trainers who are connected to a state program. Or, if a program is linked to the Business School, are there consultants who already have expertise in this particular field?
- Explicit statement of outcomes: exactly what knowledge, awareness, and skills will participants acquire by the end of the training.
- Technical assistance while the program is being implemented.
- Future advanced training.

WHAT TO LOOK FOR FROM THE TRAINING

- Assumes that a broad spectrum of people are capable of being mediators.
- Offers a multi-dimensional approach that is intellectually sound, experiential, relevant in content, and challenging.
- Raises consciousness about the role of conflict in individual lives and within the culture.
- Prepares participants for future learning by enhancing their capacity for self-evaluation.
- Sharpens volunteers' motivation to help people while teaching them detachment from the outcome.
- Meets program's substantive needs of structure, style, skills, techniques, and case development.

Once the needs of training have been ascertained, the next step is to find the appropriate trainers. Throughout the United States, there are several groups who offer mediation training. And, as this is a rapidly growing field, the number of choices increases steadily. Below three institutionally oriented training models are described. These are presented because each offers different and distinctive features. The descriptive information of each was drawn from published materials on their training. In the Resource Section of this manual, these materials are included in a comprehensive listing of training resources.

The Neighborhood Justice Center of Honolulu's volunteer training program grew out of work begun by the Makki Neighborhood Board and the University of Hawaii. What began as an experiment in one neighborhood has expanded into a program that encompasses family disputes, community issues, and

environmental problems. The training provided by this program is based on theoretical perspectives from counseling, law, sociology, psychology, communication, political science, organizational development, and industrial relations. A 30-50 hour training commitment is required from volunteers. Training generally takes place over two weeks, on evenings, and weekends. The training emphasizes practice, preparation, and self-and peer-evaluation. The goal is to train a group of volunteer mediators to be self-confident, competent to handle actual cases, and ready for additional learning. This objective is achieved through a multi-faceted approach which involves three learning components. The first lays the conceptual groundwork of ADR: the social function of conflict, the ethical implications of mediation, and historical and cultural perspectives. Also included are the process and dynamics of disputing, the potential outcomes of intervention, and techniques for analyzing conflict.

The second component is skills development. This covers the role of a mediator as a neutral third party, communication techniques, the art of negotiating, the value and use of creative problem solving, and managing and facilitating meetings. This area is taught by combining the discussion of practical and technical information with the use of exercises in which mediators work in pairs or on panels.

The final component focuses on the mediation process which is seen as including three phases. These are: 1) the **forum** in which the mediator acts as both the intake person and mediator. First, the mediator determines whether a case is mediatable. (In most models, this decision is made separately by the intake or case coordinator.) If it is, she then explains the mediation process to the parties and begins to obtain information on the issues; 2) **strategic planning** in which the mediator analyzes the information and develops an action plan and future movement, contingent upon the approval of the disputants; and 3) **problem solving** which allows the mediator to use a variety of techniques, including defining potential solutions, to move the parties toward agreement. The training in this section is experiential and also includes learning specific procedures used in community, family, and environmental cases.

The Honolulu model has trained more than 400 mediators in Hawaii, Canada, and California in a directive, single mediator, suggestion-oriented style. It

trains the volunteer to act as both an intake person and mediator, using both joint and individual sessions. Mediators are given a solid conceptual foundation as well as effective skills.

A significantly different form of training is provided by the Community Board Program which was started in San Francisco in 1977 by Raymond Shonholtz and people from Visitacion Valley Neighborhood. Their trained mediators are called conciliators and see themselves as providers of free, fast, and effective alternatives to the police and courts. The training is based on the values of: acceptance of the positive side of conflict; peaceful expression of conflict in the neighborhood; individual and community acceptance of responsibility for conflict; voluntary resolution of conflict; and neighborhood diversity and tolerance of differences.

They advocate the use of a panel process with primary emphasis on joint sessions because they view mediation as part of community building. Participants are trained as case developers as well as mediators. This role is fairly similar to intake coordinators in that they meet first with the parties to explain the process, determine the issues and people involved in the conflict, educate the people about the process, arrange for a hearing, and refer the disputants elsewhere if the Community Board process is not appropriate. Volunteers are also trained as outreach workers who gain support for neighborhood conciliation by letting people know, through presentations, the purpose of the program, how it works, and how people can become involved.

Their conciliators' training revolves around communication skills covering attitude, effective listening, and constructive criticism. The outreach portion of the training includes preparation for a presentation through self-questioning, presentation techniques, and sample materials. Case development training teaches the skills and tasks involved in visiting the first and second parties, and strategies for getting cases to hearings. Usually, volunteers are trained in all three areas and the sensitivities and skills culled from each component create a versatile and flexible mediator. Incorporated into the training is the concept of a 30 minute briefing session prior to the hearing. It is attended by the panelists, case developer, and trainer so as to prepare the panelists to work well together.

The Community Board Program has specifically set up a Center for Policy and Training to assist communities in the development of community conciliation programs. To meet this goal they offer a variety of services: Planning and Development Institutes provide people with the fundamentals of creating a community-based conflict resolution program; Trainers Institutes provide community members and staffs of other programs with the skills to train volunteers; direct training of volunteers; advanced training for mediator trainers; technical assistance for beginning and existing programs; and an array of printed materials.

Although the model is specifically designed for a community-based program, it offers many useful ingredients for a college-based program interested in a diversity of populations, decentralization, and a built-in case development strategy. The Center is currently exploring the idea of adapting conciliation boards to college and university campuses.

The last model to be discussed is the one used by the University of Massachusetts Mediation Project. The Project was trained by the Mediation Trainers & Consultants Inc. of Boston and uses their format for training mediators. It requires a 40 hour commitment spread over three weeks including evenings and weekends. However, the time frame is currently being re-evaluated with the anticipation of an intensified training period with more hours of practice over a longer time span. Usually, there are three to four trainers with an optimum size training group of between twelve and twenty-five. There is a minimum of lecturing on the philosophical and practical basis of mediation, followed by some brief discussion of the various parts of a mediation session and available techniques. The focal point of the training is role playing. Trainees watch a simulation by the trainers and then participate in several simulations themselves as mediators and disputants. The trainers' simulation is videotaped and played back for analysis by the volunteers. This enables the trainees to isolate the various components of a session which mark the central learning modules for the training. They are: the **introduction;** the **joint session;** the **mediators' caucus;** the **individual session(s);** and **writing the agreement.**

The **caucus** is a distinctive feature of this model in that it provides a designated time for the mediators to compare their understanding of the facts, issues,

and points of agreement and to plan their approach. During training, it provides the trainers with a specific avenue for teaching mediators how to think tactically through a session. As a learning tool, the participants' role plays emphasize one component at a time. Each person has an opportunity to mediate at least twice, to be a disputant at least twice, and to observe.

Feedback is a significant element in the training. Each role play is followed by detailed comments from the trainer. Participants who are observing also supply feedback. Once the training is completed, volunteers meet individually with one of the trainers who gives them a comprehensive evaluation of their strengths and weaknesses.

The underlying principle of the UMass model, which has provided training for colleges and universities throughout the United States, is that a mediator's work is designed to enable the disputants to get what they want, not what the mediators think is fair or right or good. This is accomplished through instruction in a co-mediator style with an active use of individual sessions and caucusing. Inherent in this model of mediation is a commitment to believing that the parties involved know what is best for them and to allowing disputants to arrive at their own solution.

Of course, determining a mediation model and training design are only two of the necessary steps to ensure a program's success in providing skilled mediators. Another very important decision concerns the selection of mediators.

How Are Mediators Selected?

Mediation is a complex process requiring a range of skills by those serving as third-party neutrals. These skills are necessary whether one is an ombudsperson or a mediator, and whether the dispute involves two parties or twenty, and whether the dispute involves property, behavior, or policies. Ten basic skills are listed below. While the specific use of these skills might vary from program to program, they represent the essence of what is seen as a good mediator who functions as a neutral third party.

BASIC SKILLS OF THE MEDIATOR

- Establishes rapport and trust with the disputants and between the disputants.
- Facilitates communication such that disputants are able to state and hear positions, feelings, and perceptions in ways that promote communication and lead to new options for resolving the conflict.
- Clarifies issues, perceptions, and information for each disputant and between disputants.
- Recognizes and interrupts communication patterns that prevent dialogue and resolution.
- Sees and helps others to see both self and mutual interests.
- Helps people moderate positions while saving face.
- Minimizes the effects of power imbalances on negotiations.
- Determines when negotiating is not in good faith.
- Acts impartially.
- Maintains confidentiality.

Within the field of mediation, there are different perspectives on who should be acting as third-party neutrals, given the above set of skills. Some groups believe that anyone can be trained to mediate successfully. These groups tend to train and develop a pool of mediators based on a "first come, first taken" basis. Others make a case for selecting from certain groups of professionals, from those demographically related to likely disputants, or from those who meet certain skill requirements.

Many make a case for using lawyers as mediators. While lawyers themselves will state that they have much to **un**learn in order to function as third-party neutrals, their law school training equips them with many important skills. Lawyers tend to have skills in clarifying issues, determining good faith negotiating, and maintaining confidentiality. Opposition to the use of lawyers tends to focus on maintaining a clear separation of mediation from the traditional legal system. The use of lawyers as mediators characterizes many court referral programs.

Some groups favor the use of those trained in psychology, counseling, and the social services. They find that counselors and social workers are already skilled in establishing rapport, facilitating communication, interrupting negative communication patterns, and countering power imbalances. As with lawyers, these professsionals are trained to respect and maintain confidentiality. Other programs do not select those in the counseling fields because they find those professionals have difficulty maintaining the distinction between conflict resolution and therapy. A concentration of mental health professionals is usually found in programs handling family disputes.

Programs that handle a range of cases often try to select a pool of mediators that reflects the age, sex, sexual preference, economic, and job classification characteristics of the population served. This matching of characteristics between third parties and disputants is a common approach. It is seen as a way of establishing initial trust and credibility. The degree of matching varies greatly from program to program.

The goals and focus of a campus-based program will determine the characteristics of those from whom third parties will be selected and trained. For example, Oberlin College has a mediation program as an optional step in its student disciplinary system. Because the primary population to be served is students, student mediators are chosen. In order to give weight and credibility to the mediation process, faculty, staff, and administrators are chosen to serve as co-mediators with students.

At institutions where the formal ADR model resembles an ombuds approach, external perceptions of the ombudsperson's credibility tend to guide selection. Thus, perceptions of the specific individual's credibility is key. Since an ombudsperson is usually responsible for dealing with conflicts between and among all campus constituencies, credibility across groups is essential. The person selected

must be perceived as trustworthy so that people will bring disputes to them and influential within the institution so that their recommendations will have meaning. For example, at the University of Massachusetts the ombudsperson has always been a faculty member, while at MIT the ombuds function is carried out by special assistants to the president. With an ombuds approach, institutional role and perceived individual integrity and influence rather than shared characteristics with disputants are key selection criteria.

In contrast to the ombudsperson, mediation is less person-dependent and more program-oriented. Credibility must be established by the program as a whole since individual mediators are less visible. Typically, disputants don't know anything about the third parties until they arrive at the mediation session. This is one of the reasons why many programs attempt some basic demographic matching between third parties and disputants.

The University of New Hampshire, which initially focused on tenant-landlord and roommate disputes, originally attempted to have both tenants and landlords as mediators. It was felt that this was necessary for mediation to have credibility with landlords. Both the program and the landlords found that landlords had a difficult time being impartial. The program now uses older faculty and staff as mediators with landlord disputes, using age, rather than position, as the matched element. To compensate for this shift, basic credibility has been maintained through program outreach efforts with landlords. Age matching is the criteria used to establish initial trust for all the disputants.

The UMass Mediation Project maintains a pool of approximately 40 active mediators. There are administrators, professional and non-professional staff, undergraduate and graduate students, and community residents. There are lawyers and counselors (some of the Project's best and worst mediators), full-time homemakers, businesspeople, landlords, and farmers. While no group is excluded from the pool of potential mediators, the program does select each training group to maintain a pool of mediators representative of the populations the program serves.

The UMass Mediation Project then, follows the model of preselecting potential mediators for participation in a training program and then selecting mediators for actual cases based on performance during training. At the **pre**selection

stage, the following criteria are used:

1. Contributes to demographic diversity:
   - age
   - sex
   - sexual preference
   - race
   - town of residence (the program serves many towns)
   - socio-economic status
   - job classification.
2. Has clear personal communication style:
   - listens closely, showing attention and demonstrating understanding
   - speaks clearly with understandable syntax.
3. Makes eye contact.
4. Will make a commitment to all 40 hours of training.
5. Will make a commitment to work one evening a month.

Another approach to preselection is used by the Dispute Intake and Referral Center in Houston, Texas. They emphasize self-selection. By spending a great deal of time talking about the requirements of the training, emphasizing the commitment to working one night a week for a year, and describing the nature of the work, including being the object of other people's anger, the program staff guide those who are not prepared for the demands of mediation to withdraw. While the University of Massachusetts's program uses a single preselection interview, the Center in Houston may use three to four before settling on a final group of trainees.

To sum up, then, there are five basic steps to be taken in creating the criteria for selecting those who will be trained:

STEPS IN SETTING CRITERIA FOR SELECTING TRAINEES

- Determine the likely characteristics of disputants based on the populations or conflict areas to be addressed.
- Determine the degree of similarity to be used to match disputants and neutrals and identify characteristics needed in the mediator pool to allow for that level of matching.
- Determine the level of communication skills, types of life experience, knowledge and awareness, and other skills desired in those who will be trained.
- Determine the necessity for specialized knowledge which disputes will require.
- Determine the level of commitment in terms of training and volunteer work that will be required.

Once the criteria have been determined, advertising or recruiting candidates for the training can occur. As mentioned earlier, some programs train whoever applies, allowing individuals to determine for themselves whether they are right for the program or not. Others use group or individual interviews. Some use an application form in conjunction with an interview. The UMass Mediation Project uses a written application as the first level of screening. Individual interviews with those selected from the written applications are used to further screen and select the final group to be trained.

Once the training group is selected, the question of evaluating mediator skills arises. As part of the training and as on-going program activity, methods and criteria for evaluating mediators must be adopted.

How Should Mediators Be Evaluated?

There are two questions that need to be asked in considering the evaluation of mediators:

1. How are mediators' skills and potentials evaluated during the training period?
2. How are mediators' skills and abilities evaluated when they are mediating actual disputes?

Answering each of these questions involves attention to three areas:

1. What to look for?
2. How to look for it?
3. How to separate evaluation information helpful in improving performance from evaluation information needed to make a judgment about whether or not someone should be a mediator?

Evaluation During Training

The mediation approach and training program chosen will determine, to a large measure, what skills, knowledge, and awareness mediators must be prepared to use. As suggested earlier, a good training program should provide a curriculum tailored to the needs and focus of a program. The training curriculum should include a listing of training outcomes. That is, the trainers working with the program should provide a description of the skills, knowledge, and awareness that each trainee should have acquired by the end of the training period. In order for this description to be useful for evaluation purposes, statements of objectives should be phrased in terms of the participants and in terms of behaviors. A statement such as "trainers will facilitate mediation role plays" is less useful than an objective stating "participants will use individual sessions to obtain more information" when it comes to shaping a clear base and method for evaluating skills and ability.

The nature of objectives to be achieved by the end of a training program will vary depending on the length and type of training. Objectives for an 8

hour training will be more limited than those for a 50 hour one. Too, if training involves both program and apprenticeship stages there may be two sets of objectives, intermediate and final ones. The important point is that the evaluation of potential mediators must be based on the skills, knowledge, and awareness which form the basis of preselection (if any) and which are specifically addressed through the training. It would clearly be unfair to make a judgment based on how often eye contact was made if that behavior was not a basis for preselecting or an explicit part of the training. Explicit goals tell both the program and potential mediators what is being looked for.

Once it is clear what is being looked for, **how** to look for it needs to be determined. Since most training programs rely heavily upon simulations and/or apprenticeships, observation is the primary means of evaluating potential mediators. Observation can be conducted by someone sitting in the room during simulated or actual sessions, watching through a one-way glass or reviewing videotapes. For evaluation purposes, observers should have a preset guide of what they are looking for and some easy means of recording observations. Many programs find that using a checklist works well if there is room to note the number of occurrences of a behavior and whether the behavior was appropriate or not.

Information obtained through observations during training can be used to give people feedback that will help them refine their skills and to make decisions about who will be asked to mediate cases. For feedback purposes, the sharing of observations should immediately follow the simulated or actual session. Some groups even use a "stop action" approach in simulations. This allows observers to give feedback while the role play is still going on, providing trainees with the opportunity to improve their technique or strategy immediately. It may seem obvious, but both trainers and trainees can lose sight of the fact that the primary value of a simulation comes not from doing it, but from the reflection and analysis that follow. The more closely evaluation is attended to, the more likely simulations and role plays will be fully used.

There are three major approaches to making decisions about who will actually be asked to mediate. There are those who believe that anyone who goes through training should be used as a mediator. This approach is common among grassroots community programs where involvement in mediation is seen as an important

means of community building and empowerment. This approach can also be based on the assumption that continued formative evaluation feedback can ultimately bring everyone to a level of satisfactory performance.

Another approach looks at changes in skills over the course of the training period. If observational records show improvement, then that person is accepted as a mediator. Again, the assumption is that with continued feedback and more experience, the level of skill will increase. These two approaches require that a program maintain a consistent formative evaluation program in order to ensure the development of a strong mediator group.

A third approach, which may stand alone or be merged with either of the first two, involves setting a minimal standard of performance. If by the end of a specified service or training period that minimal performance standard is not reached, then that person is not used as a mediator.

Given the substantial investment made by both the trainee and the program, it makes sense to select potential mediators carefully, provide a solid, skill-based training program, offer constant focused feedback on skills, and tell people where they stand in terms of a program's requirements. Withholding observational data is withholding the opportunity to learn: it is a disservice both to those who have attempted to develop new skills and the program. Telling people that they will not be asked to mediate is hard; however, the more specific and behaviorally-based the observations, and the more closely related to skills taught in the training, the easier it is to provide both clear formative feedback and summative judgments to trainees. A final decision is also easier to communicate if potential mediators have received summaries of observations throughout the training. They will already have some sense of how their skills fit the desired profile. Finally, some programs have found that having an option for people to repeat the training the next time it's offered, makes it easier to be honest about how people are progressing in developing the desired skills. Such an option also reflects the reality that some people need more training than others.

The UMass Mediation Project uses an observer form adapted from a checklist developed by Suzanne Goulet Orenstein, alternative dispute resolution coordinator,

Public Protection Bureau, Massachusetts Department of the Attorney General. While the Project is still working to improve their observation form, a copy has been included in appendix A as an example of a behaviorally based tool.

On-going Evaluation and Supervision of Mediators

The perceived credibility of a program, the degree of help available to those engaged in conflicts, and the quality of mediators' skills can all be improved through the on-going evaluation of mediators. This evaluation can consist of regular or occasional observations. As with evaluation during training, the evaluation of actual mediators can be used for purposes of improving performance or for deciding who to drop from the mediator pool. It can also serve the additional purpose of providing information for use in deciding who should mediate which cases. Finally, observations shared during session caucuses may be helpful to mediators as they seek more effective strategies. Thus, on-going evaluation can be seen as having multiple valuable purposes.

The UMass Mediation Project has been experimenting with videotaping and observing sessions from behind a one-way window. (The use of videotaping as an evaluation tool is contingent upon the approval of the disputants; some of whom agree and some of whom don't.) Based on these opportunities, changes in the training program are planned and observations will be conducted on a more regular basis. The observations provided a clear picture of mediators' skills, both strengths and weaknesses. Observations also revealed a pattern of unaddressed power imbalances between disputants. Since such imbalances threaten effective and fair agreements, this is an area that obviously needs more attention in the training and in the coordination of each case. Without observational data, the effectiveness of a program's mediators can only be assumed based on limited or inappropriate inferences from self-reports, the number of agreements reached, the number of agreements that last, etc.

In addition to observation, peer supervision may be a valuable tool for improving mediators' skills and for identifying issues that need to be addressed. Many mediators find that the opportunity to present cases, to strategize with colleagues about a current case, and to hear the experiences of others is very useful. The UMass Mediation Project has experimented with using a small pool of

mediators (8-10) for a limited span of time (3 months) with weekly case sharing meetings. While this proved to be problematic given fluctuating case loads, the case sharing was very beneficial.

The major problem with on-going evaluation is that it takes time--time that is often usurped by more immediate needs and demands. While most everyone would say that evaluation is critical, few programs do it consistently or thoroughly. Although the Mediation Project at UMass knew that evaluation was important, it too postponed implementation of consistent on-going evaluation. From that experience comes the admonition: **Build evaluation in from the beginning.** Assume a program shouldn't be run unless there is a way of supervising mediators.

Graduate students from the Communication Studies Program at the University of Massachusetts provided the impetus and means for the Project to begin regular videotaping of sessions. They had their research questions, the Project had mediator and program evaluation needs. It was a partnership that served both well. Although it may require a significant time investment, students from various departments may be very good resources for implementing on-going evaluation programs. Mediators can also be trained to observe. When case loads are light, observing can be a way to maintain and improve skills while providing feedback to the program and/or to the mediators. The point here is that evaluation really is important. Much depends upon it and as the Mediation Project has learned, the traditional excuses--no time and limited resources--should not be accepted.

While the focus here has been on the evaluation of mediators, program evaluation is also important. Purposes and methods of program evaluation will be discussed in chapter IV in the context of program implementation.

What Kinds of Cases Should Be Taken?

This question has already been largely addressed in the section on needs and goals. By defining the needs to be met, the population to be served, and the goals to be achieved, a profile of typical cases appropriate to the program begins to emerge. In considering choices of mediation models and training, one is forced to refine further the characteristics of disputes appropriate for

the program being planned. The categories of choices are summarized below:

DISPUTE CHOICES

Number of Disputants	two party
	multi-party
Population	college or university affiliated
	community residents
	students
	faculty
	staff
	employees
	administrators
Referral Route	self-referred
	court-referred
	referred through formal disciplinary system
	referred through formal supervisory system
	referred through informal peer or administrative channels
Type of Dispute	interpersonal
	property
	policy
Relationship between Disputants	on-going business or personal relationship between parties
	no continuing relationship

Selections from this list, plus characteristics determined by the needs and goals shaping the program, provide a basis for determining whether a case should be accepted. At the same time, it can be useful to consider what types of cases may not be taken even if they fit the basic profile. For example, the mediation program at Wellesley College is set up to handle two-party disputes within the college community. Academic honor code violations between students and faculty are not accepted for mediation nor are cases of union members which involve disputes about contracts.

There is currently a great deal of controversy in the mediation field about mediating cases involving sexual harassment, battering, and other types of violence and abuse. There are compelling and persuasive arguments on both sides—both sides speaking to the needs and rights of the victim. At UMass, the Ombuds Office does mediate sexual harassment cases as one step in the special sexual harassment grievance process. The Mediation Project has handled assault cases, although not cases of domestic violence. Although there have been successful and satisfying results from these cases, reservations persist and a cautious consideration of cases to exclude automatically may be wise.

There is also some controversy in the field over the appropriateness of mediation when parties have substantially different bargaining powers. Some groups feel that this type of inequality in inevitable: this is life and mediators seeing such imbalances must simply work to make sure that agreements will not violate basic rights or basic social-moral codes. Others feel that cases where power is greatly unbalanced should not be taken. Cases where the power imbalance between parties is likely to preclude a fair agreement because of one party's ability to intimidate the other, are not accepted at UMass. Even with this restriction, observations did show sessions in which imbalances existed but were neither recognized nor addressed strategically by the mediators.

Over the years, the UMass Mediation Project has moved from accepting divorce mediations to excluding them because they tend to be too time consuming and too legally complicated for volunteer mediators. They also exclude any case where the rights, protection, or restitution afforded by the courts would better serve one of the parties. Where a pattern of rights violations seems

likely, they will encourage a full court suit and discourage mediation. For example, when an elderly woman sought to bring a dispute involving a computer dating service to mediation, she was urged to pursue court action. The likelihood of a pattern of misrepresentation affecting many people seemed great, and the dispute thus seeed inappropriate for mediation on an individual case basis. The Project excludes cases where a party essential to a realistic agreement cannot be involved. Their pattern of case exclusion is within the mainstream of mediation programs, but it is not the answer for every program; and there certainly is not agreement within the field on what or how to determine appropriate cases.

One of the few necessary preconditions that everyone in the mediation field seems to agree on is the existence of an on-going relationship between the disputants. From court referral programs to college dorm-based ones, everyone agrees that mediation is most effective when a relationship exists and will continue to exist, in some form, in the future.

How Will Cases Be Referred?

In this chapter, which concerns aspects of planning a program, the discussion of case referral focuses on identifying potential referral routes. In the next chapter, which concerns program implementation, the building of a support base, the use of effective case development strategies, and appropriate case intake and scheduling procedures will be discussed. All of these are important components of case referral.

There are three major routes by which cases come to mediation:

1. Purely voluntary where one of the parties initiates mediation or a neutral suggestion is made and then chosen by the parties.
2. Quasi-voluntary where one or both of the parties feel that because of the authority of the person suggesting mediation or because of the nature of the other options, they have no choice but to pursue mediation.
3. Mandatory where mediation is required as a step in a disciplinary, grievance, or legal process (e.g., lease with required mediation

clause, clerk of court won't act on a complaint until mediation is tried, students are required to try mediation in all roommate disputes).

It would be useful to be able to say that one of these routes is best. However, such categorical statements are not now, and may never be, possible. Voluntary participation seems best on the surface, but false assumptions and dishonest intentions may prompt voluntary initiation of a mediation process. Conversely, mandatory mediation may seem a contradictory notion, yet some mediations required by the courts have been noteworthy in the motivation and willingness of parties to reach fair resolution.

Thus, questions rather than answers are what can be offered to guide the planning process with respect to case referral routes. Questions that are useful for each campus to consider are:

1. Given the needs and goals formal ADR is to address, does it make sense for mediation to be part of the informal conflict resolution process or part of the formal one?
2. Does mandatory participation in mediation—in specified instances-fit with proposed needs and goals as a means to educate about and develop skills in conflict resolution?
3. If mandatory, how are due process and procedural rights safeguarded?
4. Will members of the campus community trust the mediation program if it is mandatory? If the referral route is formalized or standardized in some way? If it is purely voluntary?

In the planning stage, the question of how cases are referred affects the type of networks that should be emphasized in building support for a program. If, for example, the needs and goals suggest a purely vountary program, then it makes sense to focus outreach efforts on the population whose disputes are to be handled, generating support for the program among those who will be using the services. Evidence of support, interest, need, and willingness to use the services could be used to obtain administrative support.

On the other hand, if the goals and needs involve improving the student

disciplinary system, it may be important to ensure that mediation is a formal option and a standardized part of the disciplinary process. This may mean that initial efforts in building support for a mediation program are directed toward those with the power to introduce or implement changes in the disciplinary system. These and other aspects of building support for a mediation program will be discussed in detail in the next chapter.

While there is no one referral approach that is right for every program on every campus, asking and answering the questions posed here will aid the planning process and help to focus initial efforts for productive immediate and long-term payoff.

IV. WHAT NEEDS TO BE CONSIDERED IN PLANNING FOR PROGRAM IMPLEMENTATION?

This chapter concerns some of the "how to" questions that arise after some of the basic planning questions around client populations, needs, goals, mediation approaches, and training have been answered. These questions concern the practical matters of getting support, money, and referrals and arranging intake interviews and mediation sessions. The questions considered here are:

1. How are administrative and financial support obtained?
2. How do programs promote the referral of disputes to mediation?
3. How large a budget is needed to start?
4. How are programs staffed?
5. How does case intake work?
6. How can mediators be effectively scheduled?

Although answering these questions involves consideration of the practical details that emerge as one is moving toward program implementation, these are still planning questions. They, just like goals, must be addressed long before a program opens its doors.

How Are Administrative and Financial Support Obtained?

In an effort to answer this question, the initial activities aimed at creating support that were carried out by four successful programs are examined. The founder of each program was interviewed about how program and financial support were developed. Their responses are summarized below.

Wellesley College

Wellesley College is a private women's college with approximately 2,200 students. The mediation program got underway in 1984 and serves primarily students, although faculty, staff, and community residents are all seen as potential mediators and clients for the program. Shirley Quinn, class dean and director of Academic Assistance Programs, originally served as the coordinator of the mediation program. Now that role has been assumed by Joan Barth, head of house. As a key person in the establishment of the Wellesley program, Quinn discussed the steps taken to build support for the program.

Five years before the inception of the Wellesley program, two faculty members, Sally Merry and Susan Silbey, had conducted research on mediation styles. With the support of the dean of students, they sponsored a mediation simulation for the college community. Nothing more happened until Quinn and another staff member, Joan Barth, enrolled in a mediation training program. As they traveled back and forth to the training, they discussed applications to Wellesley. When their program was completed, they discussed mediation with the new dean of students. The dean encouraged them to spread the word. They conducted a simulation for the residence staff and that led to several referrals of disputes to them.

During the year, they also met with the student chief justice who was convinced that mediation was an important alternative. This led to the incorporation of mediation into the student judiciary process.

Representatives from the University of Michigan visited Wellesley that same year to talk about grievance procedures. These discussions led to more talk about mediation. The dean of students was at this meeting and the discussion further persuaded her of the value of mediation.

Since more than two mediators would be needed to handle cases, the dean of students and the president authorized a training program. Quinn and Barth then surveyed all the departments on campus to determine needs and interest in the training. Each department paid for the training of those they sent to be trained. The Dean of Students Office, the Chaplaincy, the President's Office, the Personnel Office, and the Student Government were among the departments that sent faculty, staff, and students to the training.

Only one serious concern about the implementation of a mediation program on campus was raised during the first year and that revolved around honor code violations. While Quinn and others could easily agree that honor code violations would not be mediated, the question was whether or not the mediators must also report any honor code violations that came to light during the course of mediation sessions. Quinn felt that this policy needs further discussion since it intrudes upon mediator confidentiality, a key element in the mediation process.

In reviewing the sequence of events, Quinn identified several factors that affected the support they received. The fact that Quinn and Barth were sufficiently interested and enthusiastic to volunteer was important. That they independently sought and obtained training also gave weight to their proposal. A crucial element was faculty support. Quinn noted that on her campus, a program **must** have faculty involvement and support to be accepted. The prior involvement of faculty in mediation research paved the way for the later development, by staff, of a mediation program. Because of this prior faculty interest and the support of the dean of students, once Quinn and Barth became interested, it only took one year to get the program organized and running.

Quinn noted that the power structure at each institution is different. Obtaining support must begin with an understanding of the power structure on a campus. This leads to identifying the individuals and groups whose support will be essential to short-term approval and long-term program success. Quinn also identified the importance of support from the top and urges everyone starting a program to go to the top as soon as possible.

The program at Wellesley is funded by the dean of students, the president, and the Affirmative Action Office. Quinn felt that the investment of these administrators is based on the congruence between the philosophy of mediation and their conviction that people should be able to come to rational agreement. They did not need to be persuaded of the value of mediation for the campus community.

Since everyone working on the mediation program--coordinator, intake interviewers, and mediators--are volunteers, and other costs are covered through

the offices where intake occurs, additional funds are needed only for supplies, PR, and attending conferences. The program receives around $500 to cover these costs.

Oberlin College

Oberlin College is a small private college located in Ohio. It has 2,700 students. At Oberlin, the mediation program serves primarily students and was initiated by the dean of students, George Langeler, who provided the outline of events that led to the adoption of the program on the Oberlin campus.

The revamping of the judicial charter enabled Langeler to suggest the development of mediation as an alternative to adjudication in student disputes. As a member of the special task force working on revisions to the judicial charter, Langeler was able to provide information on mediation, on other campus mediation programs, and on how and why mediation might be incorporated into the new charter.

As dean of students, and as someone very interested in mediation, Langeler took the initiative in making mediation a real option by organizing a combined course and training program. By using the College's winter-term program, he was able to sponsor a credit course for students. The course was structured to accommodate interested faculty and staff from Oberlin and deans from other colleges in the state through a colloquium component. The winter-term program brought in experienced mediators from several programs to make presentations as part of the colloquium and then brought in trainers to train all the students plus campus staff and faculty. Around 25 people were trained initially and they became the core group of mediators.

One of the presenters at the colloquium was an Oberlin alumnus who serves as a federal conciliator and mediator. Through a special college program, which brings alumni to campus to make presentations for students, Langeler has been able to arrange for the annual training and re-training of the program's mediators. As an alumnus, the trainer has a special interest in and commitment to the institution.

While there were some basic questions about mediation in the context of

a judicial system--'what if it fails?', 'should mediation include non-student-student disputes?', 'what happens if only one party wants to mediate?'--no major reservations or concerns were raised. In the absence of political or substantive obstacles, it only took about a year and a half to get the program operational (from the adoption of the judicial charter to the actual training of mediators). Since Langeler took a sabbatical during this time, it seems likely that implementation would have proceeded even more quickly had he been on campus throughout that period.

Inasmuch as the mediation program is coordinated by the judicial coordinator as part of her job, funding for mediation is simply included in the funding for judicial administration in the budget provided by the Office of Residential Life and Services. However, the initial training costs were handled differently. In order to bring in trainers from the outside, Langeler sought funds from the student committee that funds special projects for students, from the president, and from several departments. The fact that the training was connected to a credit winter-term course, including a colloquium on ADR with an emphasis on mediation open to everyone, aided funding. Langeler felt it would have been more difficult to have obtained funding solely for a training program.

Looking at Oberlin and at the needs and resources of other small colleges, Langeler felt that there are three requirements that must be met for a mediation program to be accepted and successful: 1) the program must be well conceptualized; 2) must have people involved who have had the benefit of excellent training; and 3) must have someone who understands mediation to run the program. He noted that while these may seem obvious, the limited resources of small colleges may make meeting all three conditions difficult.

University of New Hampshire

The University of New Hampshire (UNH) is a public land grant institution serving approximately 5,000 residential students and 5,000 commuter students. Their mediation program initially served only commuter students and is now expanding to include residential students. Only student-student, and student-landlord cases are taken. Maggie Morrison, the housing coordinator in Commuter Affairs,

coordinates the mediation service and provided the information on how the UNH program obtained support.

Interest in mediation began with the assistant dean of students who is responsible for commuter and transfer affairs. She heard a presentation on mediation and asked Morrison to research mediation programs on other campuses and to determine the feasibility of one at UNH. The research led to an in-depth examination of the programs at the University of Michigan and Massachusetts. When it seemed that there was evidence to justify a program at UNH, Morrison formed an advisory panel composed of community residents, students, faculty, staff, and a lawyer from the Student Legal Services Office. The advisory group was asked to provide guidance in shaping a program to meet the specific needs at UNH. Concurrently, Morrison presented the idea of a mediation program to the Landlord-Tenant Board which she chaired as housing coordinator.

When both groups indicated that they thought a mediation program would be a good idea, the assistant dean of students authorized Morrison to go ahead with program development and implementation. The dean set aside funds in her budget for the first year. The rationale for the program at this point was based on its being a pilot program for commuter students, since those students lacked resources for resolving disputes occurring with roommates and landlords. A long-term objective of working with all students was also put forward, but was not the focus.

In the course of obtaining support for the program, three key concerns were raised. They were: 1) could mediators be held liable; 2) at what point should/would mediators break confidentiality; and 3) could the project be brought to court to testify? These questions led to the development of specific operating policies that have proved useful. For example, since the local courts do use agreements as evidence in hearings and trials, landlords have sought to call Morrison as a witness. The program's clear policy of no court testimony has provided a way of refusing without alienating the landlords or risking the loss of impartiality and neutrality.

In seeking support for mediation, then, Morrison encountered very little resistance. The only serious reservations came from the Office of Residential Life, and this had been anticipated by the advisory group. From the perspective

of Residential Life staff, mediation raises the possibility of agreements violating department policies. Although Morrison has met with staff to discuss ways in which mediators could be trained to inform disputants of acceptable and unacceptable elements in an agreement, the concerns of Residential Life staff remain. As the mediation program seeks to expand to include residential students, this becomes a more pressing problem. Reviewing the early steps she took to obtain support on campus, Morrison noted that a major error was not involving Residential Life staff from the very beginning (they were not represented on the advisory group). She concluded that one of the most important things to do in building support is to get **all** the people from whom support will be needed involved **early.**

It took only one year to get the program at UNH up and running. Six months were spent on researching mediation and mediation programs on other campuses and six months obtaining support for developing a program to meet UNH's needs. After a year and a half of operating, Morrison felt that the program has demonstrated that it meets needs of commuter students. As the program begins to expand to include residential students, Morrison is allowing two years to demonstrate program effectiveness with this population.

In addition to Morrison's salary as housing coordinator, which includes responsibility for coordinating mediation services, the mediation program operates with a budget of $6,000 from the assistant dean of students. Morrison noted that continued funding will depend on the number of people served and the criterion of being "well-utilized." She also noted that expansion may necessitate the hiring of another staff person and some shifting in budget sources to reflect the change to a program serving residential as well as commuter students.

University of Massachusetts

The University of Massachusetts (UMass) is a large public land grant institution serving 25,900 students--19,800 undergraduates and 6,100 graduate students. Approximately 11,500 live on campus. Janet Rifkin, a faculty member who volunteers as director of the Mediation Project, discussed the steps taken at this campus to develop support for the mediation program.

Rifkin was one of several faculty in the Legal Studies Department interested in mediation. As a faculty member committed to setting up a mediation program, she found the dean of students generally receptive to the idea of faculty collaboration on projects affecting the quality of student life. In turn, he was specifically interested in the idea of a mediation program and endorsed it immediately. Residential and disciplinary staff were then approached with several aims: 1) to determine what the needs were related to conflict resolution; 2) to obtain information that could support a grant proposal for creating a mediation program; 3) to educate these staff about mediation; and 4) to enlist their participation as information providers.

Since there was support at the higher levels of the administration, the major focus of building support was on the many campus offices and services. The idea of mediation was strongly supported by the coordinator of the campus Resource Network, a network of all the major campus service providers. Through the resource group, Rifkin was able to discuss mediation in a positive setting with campus police, the Employee Assistance Program, the women's center, counseling center staff, health care staff, etc.

There were some consistent concerns raised in all these discussions about creating a mediation program. The major ones were: 1) mediation might undermine the disciplinary system since students should be punished, and the fear was that mediation would let students off the hook; 2) mediation might undermine due process for students; 3) police might open themselves up to liability suits; and 4) the traditional authority structure might be undermined by students mediating conflicts or having disputes mediated by other students.

There were several political factors that affected the level of early support. First, the position of ombudsperson needed to be filled by a faculty member and Rifkin was the preferred candidate. Since Rifkin wanted to set up a mediation program, the two things could be negotiated jointly. Second, the University was in the midst of what was termed a Year Toward Civility, a time for improving the way tensions due to differences of sex, race, sexual preference, religion, and ethnicity were understood, expressed, and handled on campus. Mediation fit in since other alternative means of anticipating and addressing conflict were being created. The Year Toward Civility was a project of the chancellor's.

As a result, there was a great deal of staff support for related activities. Minority staff were particularly active in promoting projects. All this activity gave a clear context for discussing the possibility of campus-based mediation and support for mediation afforded political benefits on many levels for a variety of reasons.

From Rifkin's perspective, however, obtaining support from a large number of staff required some delicate balancing since there were the usual pitfalls: inter-staff rivalries and jealousies, long-standing patterns of suspicion (if x likes it, it can't be good), and personality conflicts. In Rifkin's assessment, the political climate created by the Year Toward Civility coupled with a carefully maintained neutrality allowed the support to be given without complications.

The most important point in building support, based on the experience at the University of Massachusetts, is to avoid creating an alignment with any one person, administrative unit, or office. To this end, it was decided to consciously keep the program from being identified with the dean of students or any of the other administrators and staff who supported the idea. One decision made in this context was that of creating a new and separate office to handle mediation.

The program was originally funded with a small foundation grant and money from the Chancellor's Office and the vice chancellor for student affairs. In seeking funding, the dean of students had said that he would support the program if Rifkin could obtain financial support from other sources and provide evidence of broad campus support. The grant was an aid in obtaining support from the Chancellor's Office and in demonstrating to the dean the viability of the program.

Funding from the Chancellor's Office has been institutionalized and appears secure. Because the source of funds from Student Affairs is more discretionary and variable, it is less clear how long these funds will continue. Out of the total budget of $65,000, Student Affairs contributes about one-fifth. The program has recently established a fee generating account so that a fee can be charged for services such as training, conferences, and special mediations. As a public service program, the staff feels it should be able to partially support itself. Moving toward partial self-support is seen as important while full institutional funding is available.

Summary

While all these programs went about the task of obtaining support in different ways and from different positions (faculty, staff, and administrator), there are some general patterns to be found. First, it seems essential that the dean of students support the idea. Second, a process that allows for collaboration and input--whether through existing committees, advisory groups, or special meetings--proved useful on all campuses. Third, support from the highest administrators on campus seemed important in at least three of the campuses. Finally, the size and diversity of the student population seems likely to affect the level of concern over legal issues and the impact of mediation on discipline. Such concerns did not arise at the smallest institutions at all, emerged somewhat at the medium-sized university and were of major importance at the large university. While it would be inappropriate to generalize, this pattern in the institutions examined here suggests an area to be considered in preparing for presentations.

What Do Programs Do to Promote Referral of Disputes to Mediation?

This is probably the most frequently asked question by people starting a program and it's the one for which there is the least satisfactory answer. In answering this question here, both the actions taken to promote referrals and the obstacles to more satisfying results are considered. Since these obstacles are an important basis for analyzing and selecting case development strategies, they are addressed first followed by a discussion of the strategies themselves.

The obstacle that everyone faces is that of changing ingrained patterns of thinking about and handling conflict. Mediation requires a creative shift in thinking about traditional responses to conflict. Basic philosophical differences between formal disciplinary systems and mediation can make it difficult to integrate and incorporate mediation into a campus governance structure and into personal views of conflict resolution. Philosophically, mediation appears interesting and compelling for many people. But there is generally a wide gap between support for the idea of mediation and support of the practice of mediation on a campus. The integration of behavioral changes is difficult.

And it takes conscious attention. People may have to work hard to remember to suggest mediation as a way of responding to disputes brought to their attention. It takes a long time--and this is assuming that support is fully intended and mediation principles fully accepted. As George Langeler of Oberlin noted, the greatest hindrance to mediation referrals is getting people to ask themselves, 'could this be mediated?' One implication is that time and effort must be spent at the beginning to educate those who will later be in positions to promote or hinder referrals. This early education in the philosophy, practice, and meaning of mediation for a campus community will be most valuable if it allows people to find the limit of their acceptance, support, and commitment. Surface support that lacks true alignment with a person's values, perspective, or expectations may seem useful at the early stages of seeking broad campus support, but it can leave the program without disputes to mediate and is more difficult to deal with than outright opposition.

Despite such fundamental resistance, campus programs rely on a variety of means to reach disputing parties who could benefit from mediation services. Some of these means target the resisters, directly or indirectly. Others are means of reaching potential clients directly. Using examples from the four institutions already described, some of the basic approaches used to educate people about mediation in general and the program in particular, and to build acceptance and trust for the program will be highlighted. These approaches are simulations, direct advertising, referral strategies, location of the mediation coordinator, choice of intake location, training of high level administrators and other staff, and selection of a program coordinator. This should be useful in getting started.

Simulations

Simulations are a major vehicle for educating people about mediation. At UNH, for example, a major simulation is put on for the entire campus every fall. In the spring, simulations are conducted in classes where conflict resolution is part of the syllabus. These simulations give people a concrete sense of the kinds of disputes that can be mediated, how mediation works, and how they might use mediation to handle difficult conflicts.

Direct Advertising

Direct advertising is generally used to let people know about the existence of a mediation service. Oberlin and Wellesley, for example, distribute brochures to students every year. UNH and UMass have used radio spots and poster ads to educate about mediation by depicting conflicts and suggesting mediation as a means of handling the problem. Both programs have also tried ads in the student and/or local newspapers. Neither is certain how effective any of these mechanisms have been. Janet Rifkin did note that newspaper articles on mediation and the mediation program have seemed to lead to more case referrals.

Referral Strategies

Referral strategies are being explored by Maggie Morrison at UNH. Next year she will be experimenting to reach what she terms "underground referral sources." She noted that freshman English students are required to write daily papers and that these frequently focus on problems and conflicts they're experiencing. She will be working with the freshmen English faculty and the freshmen advisors to educate them about mediation and the mediation program and to identify ways of providing appropriate information and referrals to students who need help with conflicts.

Location of the Mediation Coordinator

The location of the mediation coordinator has aided referrals at both Oberlin and UNH. At UNH, the housing coordinator is the person to whom commuting students have always gone if they have a problem with a landlord or roommate. Since the housing coordinator is now the mediation coordinator, too, she is in the position of being able to suggest and explain mediation whenever it seems appropriate. This means that the student does not need to be referred to another, unfamiliar office. At Oberlin, the judicial coordinator is responsible for guiding students through the disciplinary system. Again, since the judicial coordinator manages the mediation program, she can suggest and encourage mediation whenever it seems appropriate. Furthermore, because she is lodged in the Office of Residential Life and Services, the deans and housing staff

are very much aware of mediation. At UMass and Wellesley, by contrast, a potential user is usually referred to another office for an initial intake interview. This may deter some potential users, especially if they mistrust or are unfamiliar with the office in which the mediation program or intake interviewer are located. From the point of view of the student, referral to mediation can seem to be just another bureaucratic step. It may be that having mediation intake interviewers present in the offices where disputes are first brought, would lead to more cases being mediated.

Intake Location

Intake location affects trust and acceptance. As suggested above, the offices in which mediation intake is located can be positive for potential users if the office already has a positive reputation with that group. Using UNH as an example, again, the location is positive for commuting students, initially the primary population. However, as the program expands to include residential students, the location has certain drawbacks. Because the office is so strongly identified with commuter student needs, other campus staff may not see the Commuter Center as an appropriate place to refer residential student disputes. Residential students themselves may have the same reluctance and may not feel that their needs and concerns would be understood. Too, a strong identification with one group may impact on the perceptions of impartiality.

Training of High Level Administrators

The training of high level administrators, as well as entire departments and offices, has been important at UMass in developing legitimacy and referrals. For example, the entire staff of the Dean of Students Office has been trained and is a source of student dispute referrals. At the same time, the staff's skills for handling disputes themselves have improved. The UMass mediation staff also makes an effort to teach about mediation and alternative dispute resolution through on-campus professional development workshops and seminars that are made available to different campus groups. This has also proved to be an effective strategy for both educating people about mediation and seeding potential referrals.

Program Coordinator Selection

The selection of the program coordinator was considered a key factor in the use of the service by three of the four programs. They felt strongly that the person identified with the mediation program has had a direct bearing on case development. Finally, three of the four programs felt strongly that the reputation of the person identified with the mediation program was a key factor in the use of the service. At Oberlin, the reputation of the judicial coordinator led to faculty being willing to have some faculty-student disputes mediated. At UNH, landlords have been willing to try mediation solely because of their respect for the coordinator with whom they have worked for several years. At UMass, the fact that the director is a lawyer, a faculty member, and a former campus ombudsperson has been essential to obtaining and maintaining administrative support.

How Large a Budget Is Needed to Start?

The amount needed to start a program depends on several factors: 1) who will be coordinating the program and/or its development; 2) who will be conducting the training of mediators; and 3) where intake for mediations will be held. If a campus has staff or faculty whose duties can be changed or expanded to include the development and implementation of a mediation service, then there may not need to be any additional salary costs. All the programs use some type of cost saving staffing pattern--from fully volunteer to combined volunteer and paid staff--to handle program administration. All four rely totally on volunteer mediators as well.

While some costs can be saved in these categories, the initial training of a group of mediators on campus is likely to be expensive. Every program had to obtain funding for this start-up cost. UMass and UNH obtained funding through regular budget channels, while Oberlin and Wellesley used special funding routes.

Annual training to expand or maintain the mediator pool is another cost that can be handled in a variety of ways. UMass uses its paid coordinator, volunteer director, and long-term volunteer mediators to train new mediators.

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ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890
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The cost of training materials is included in the regular budget. Oberlin, by contrast, pays for the travel of an outside trainer, who is an alumnus and contributes his time, to come twice a year. Hence, there are no significant costs for training at Oberlin. At Wellesley, the departments that send representatives to be trained pay the cost of the training. This is another example of funding strategies other than direct budget allocations to cover program needs.

If there is an office on campus that can become the home for mediation services, then modest phone, duplication, and supply needs may simply be absorbed. However, even in a program that uses all volunteer effort (that is, no one's job description or responsibilities include mediation) and that uses the resources available through existing offices and budgets for basic operating, there is a need for a separate budget for publicity. Wellesley, which is a model of a totally volunteer program with basic costs absorbed by other existing offices, has a budget for PR and conference attendance.

In summary then, as seen in the above institutions, budgets can range from $500 to $65,000. The size of the budget obviously affects or is affected by staffing, intake, and case load options.

How Are Staffing, Case Intake, and Scheduling Handled?

As the hard and critical task of building a base of support and interest is being attended to, simultaneous planning for staffing the program, case intake, and scheduling of mediators should also be undertaken. Staffing the program includes personnel considerations as well as those of securing adequate space for both program administration and mediation sessions. Case intake addresses the questions of the purpose of intake, the role of the intake person, who should do intake, where intake should occur on campus, what information should be collected from clients, what actually transpires in an intake session, and problems arising from intake sessions. Scheduling of mediators covers decisions about scheduling style and what criteria to use in selecting mediators for specific cases.

How Are Programs Staffed?

Obviously, the major factor influencing the staffing of a program is financial support. The spectrum of staff possibilities reflects the level of financial commitment made by the college and/or outside agencies. At one end of the spectrum, as at Wellesley College, the program is staffed solely by volunteers. In the Wellesley model, an administrator volunteers as the mediation administrative coordinator. The coordinator meets on a regular basis with the Governance Committee which is composed of representatives from subcommittees that handle different aspects of the mediation program. Among these is an intake coordinator who is in charge of supervising intake. The actual interviewing is rotated each week among four people: affirmative action officer, chaplain, student chief justice, and someone from the Personnel Office. Students, faculty, and staff volunteer as mediators.

Appearing toward the center of the spectrum are Oberlin College and the University of New Hampshire. Both have mediation programs coordinated by someone whose job description includes this responsibility. At Oberlin, it is the judicial coordinator. She also conducts the intake interviews. Since it is part of the student judicial system, only student cases are mediated, usually by a student with a faculty or staff member. Training is conducted by an alumnus who contributes his time as part of an Alumni Service Project; travel is paid through a special fund earmarked for these alumni presentations. The University of New Hampshire's program is coordinated by the housing coordinator in Commuter Affairs. In addition to administering the program, she also handles intake with the help of a student intern. At this time, the program only accepts commuter student disputes which are either student-student or student-landlord in nature. However, they are planning to expand to encompass all student cases and will need another staff person.

The University of Massachusetts Mediation Project represents a program that is substantially funded. There is a combination of salaried and non-salaried staff. The project director, who is a faculty member, donates her time. She is responsible for the overall supervision of the program. The project coordinator has major responsibility for overseeing the day-to-day management of the

office and for coordinating all cases. This is a full-time paid position. There are two paid part-time administrative assistants who assist in the management of the office and often serve as a case coordinator for clients. Currently, there is a staff person serving as the liaison from the Project to the Consumer Protection Agency and shortly, there will be one designated to work with the courts. Both of these jobs are salaried. During the course of the year, there are interns and work study students whose responsibilities range from organizing conferences to helping with general office work. Students, faculty, staff, and community members volunteer as mediators.

As is evident, it is not necessary to have abundant financial support to run a mediation program. However, consistent and substantial funding allow for the provision of a range of services and the possibility for expansion, while diminishing potential job overload.

There is a direct correlation between who staffs the program and space requirements. When the staff is already an integrated part of the college community, such as at Oberlin, it can be assumed that their offices are adequate for administering the program. Administrative space needs are different for a program where mediation services are established independently. For example, UMass requires an office identified as the Mediation Project, large enough to accommodate several staff people. In both situations, intake can be handled in the office. (Assuming that a choice has not been made to scatter intake throughout campus, in which case, the office might only be one intake location.) Mediation sessions, however, require some very specific space conditions. The conditions listed below reflect the ideal environment for a mediation session:

1. Pleasant and comfortable, thus helping to offset the tension carried in by the disputants.
2. Tea and coffee available to make the parties feel welcome.
3. Two waiting rooms so that the parties are not forced together during a mediators' caucus.
4. Enough room to comfortably accommodate a table and chairs for mediators and disputants.

5. Appropriate space to permit the use of evaluation tools such as observation and videotaping.

6. Accessible to targeted populations.

How Does Case Intake Work?

Intake sessions are an integral part of the mediation process. They constitute the first step in mediation, as well as the first exposure to a program. The interview is the time to build the client's trust and confidence in the service and in the person handling intake. The purpose of an intake session is threefold: 1) determining whether a case is suitable for mediation; 2) deciding what kind of person would be the best mediator for the client; and 3) providing the client with enough understanding of mediation so that they can make an educated decision as to whether mediation is the appropriate route for the resolution of their conflict. Probably the most complicated task among these three confronting the intake worker is that of deciding whether a case is mediatable. Aside from utilizing the criteria outlined in chapter III, as to what cases should be taken, there are some further considerations that can enter this decision. For example: Should a program take cases that involve drug or alcohol abuse? Should a program take cases where criminal charges could be pressed? Are there liability issues involved? What if the intake worker thinks the person is not capable of mediation or of signing an agreement they can live with? What if the intake worker just feels uncomfortable about taking a case?

These are complicated issues and there are no general guidelines available. The field is still too new for the paths to be well marked. At UMass, the intake interviewer makes the decision, sometimes in consultation with the project coordinator; the guiding criterion being a subjective sense of whether the parties seem capable of mediating and living up to an agreement. As more mediation services are established, firmer guidelines for accepting or rejecting cases should emerge. In the meantime, the best way to handle the potentially problematic issues that may arise is to develop some initial guidelines for the intake person's use.

The person handling intake is often also the case coordinator. The case coordinator is responsible for scheduling the session and mediators and for

being present during the mediation to greet the parties and provide assistance, if necessary, to the mediators. It is important to realize that the intake person can affect the way the conflict is viewed by the individual who comes to a program. Therefore, some training in both the development of a philosophical understanding of intake work and in the area of specialized skills may be appropriate.

An essential aspect of intake work is the appreciation of the importance of conflict in one's life. Conflict is a normal part of everyday life that can be productive and of positive value. It can uncover buried issues and open them up for discussion and resolution and it can improve the communication process between people. Therefore, it is important that an intake worker honor and validate the importance of the conflict that is brought to them. This in turn allows the disputants to accept their conflict and to find its significance for their lives. Since this acceptance may be the first step in changing the situation, it is crucial that the acknowledgment be made directly to the disputants.

The goals of the intake worker are to foster a cooperative process, establish trust, interview the disputants, and ascertain the problem. In addition to a commitment to the above perspective on conflict, an intake worker should possess the following skills and personal characteristics:

1. Flexibility in style since it is necessary to adopt whatever style suits the situation. It is important to frame the world in the client's terms. If a client is reluctant to discuss the dispute, the intake worker will need to take an active role in leading the conversation. Other times it is the client who wants to direct the conversation and the intake person responds accordingly.
2. Friendly and honest manner with the ability to empathize and sympathize. This helps to build trust.
3. An active and careful listener which demonstrates interest as well as allowing for an accurate understanding of the situation.
4. Comfort with eye contact for this increases trust and encourages the parties to share information.

5. Good questioning and interviewing techniques. Discovering who, what, where, and why is an important part of the work.

Another factor to be taken into consideration when selecting intake people is their credibility with the disputants. Their visibility and reputation may determine their success. Both Wellesley College and Texas A & M University have a range of people from within the university structure acting in this capacity, including affirmative action officers, student activities advisors, counseling psychologists, and graduate assistants. Intake interviews are thus conducted in the various offices of the interviewers. By contrast, at UMass, intake workers are an integral part of the program staff and their credibility rests on the credibility of the program. The importance of program credibility for intake purposes is underscored by the fact that interviews occur in the Project offices. It doesn't seem necessary to go into a detailed discussion on this subject since the issues raised here are similar to the ones explored earlier when addressing mediator selection. Rather, it should just be noted that intake people holding official positions within a college may hinder or promote perceptions of impartiality, depending on the population being served. This is due to their position, their previous reputation, or the location of their office.

Regardless of what options are chosen with respect to who handles intake and where intake sessions are located, there are some basic guidelines to the formation of an intake interview. The guidelines listed below inform the structure as well as the content of the interview:

1. Intake sessions should be set up with all parties individually and ideally, the interview should be conducted in person.
2. The purpose of intake is to give the client some help with his problem. This could mean referral or it could mean scheduling a mediation session.
3. The intake person should take the lead from the client as to the most appropriate interview style.
4. The ideal time frame for the interview is twenty minutes; the task is not to resolve the problem, but to understand the content

and issues of the dispute. However, if the session lasts longer, it's fine and clock watching should be avoided.

5. Introduction of the principles of mediation immediately so as to get the disputants familiar with this approach to viewing a conflict. For example, an intake worker might ask the client to present the other person's point of view of the dispute.

6. Forms are important in that it's critical to get the names, addresses, and phone numbers of the people involved in the conflict, as well as a schedule of available times for mediation. A sample form used by the UMass Mediation Project is included in appendix B. Although the form contains room for other pertinent information, intake workers at UMass do not fill in this additional data until the interview is over. They feel that shifting the focus from the form to the person helps to alleviate the sense of "just another bureaucratic process"; a perception in clear contradiction to the goals of most mediation programs.

7. Intake workers should keep their opinions and value judgments to themselves. Their job is to provide assistance and to begin to lay the foundation of mediation as a neutral process.

The precise nature of an intake session will vary due to the personality of the interviewer and client and to the interviewer's previous successful experiences. Most programs employ only a few intake people and as a result, the workers have the opportunity to refine and polish their skills and style.

A discussion of intake is not complete without addressing the problematic questions posed by an intake session: 1) How do you get the second party to come for an interview? 2) How should an intake worker carry the message from the first party to the second one? and 3) How does an intake worker handle disturbing information that surfaces during an interview in a case that is turned down for mediation?

To secure the second party's participation, the UMass Mediation Project engages the complainant in working with the Project to get the other person to an intake interview. The complainant is asked to contact the other party

to inform them of the situation and to request that they call the case coordinator for an interview. It is explained to the first party that their making the contact is a strong signal to the other person that they are ready to deal with the problem, and that it can be threatening and alienating to the other person to be contacted by a stranger. If for some reason the complainant refuses to make the contact, then the case coordinator will handle it. He will send a letter to the second party, followed by a phone call. If the client has agreed to contact the other party and there has been no response within a week, the case coordinator will call the first party to verify that they have made the contact and will then send the other party a letter. If the second party fails to respond to the letter, the UMass Project views it as a clear message that they are not ready for mediation or that they do not feel it is an appropriate form of resolution. At this point in the process, no response is accepted as the response, since mediation's success is dependent on its voluntary nature.

The manner in which the intake worker communicates the concerns of the first party to the second party is just as important as this initial contact between the parties. As mentioned previously, the intake person is not an advocate of one position over another or one person over another. If he is an advocate of anything, it is of the mediation process itself. His strategy is to focus on the other party's willingness to mediate and to introduce the issues in a general and neutral way, e.g., "I understand you are having a problem with X." Sometimes it is necessary to refer to a particular issue because of a glaring omission or discrepancy between the stories. Still, it should be raised in an impartial manner. This delicate balancing provides the framework for building a safe environment for the clients.

Although an intake worker may decide that a case is not mediatable, the interview is still considered a part of the mediation process and as such is bound by confidentiality. Each institution needs to make its own decisions as to whether specific disclosures will be exempt from confidentiality. Sometimes there are state laws that inform this decision. (Confidentiality and its legal implications will be discussed in chapter V.) The critical point is that these philosophical and political choices must be well publicized and clients given ample warning if during an intake session the conversation veers toward this

murky territory. If information emerges during an intake session that is troubling to an intake worker, under most circumstances it does not warrant a break of confidentiality. Rather, it is up to the intake worker to try to find a way to handle the situation with the person. For example, someone divulges suicidal feelings. It would be incumbent upon the intake person to explore with the client the available options for dealing with these feelings. Clearly, this area is a complex one that requires much forethought and discussion prior to implementing a program.

How Can Mediators Be Effectively Scheduled?

There is no cardinal rule governing scheduling. In projects where the staff is small, such as at UMass, a personalized style of scheduling often emerges. The style reflects the use of both objective and subjective criteria. In programs, specifically Neighborhood Justice Centers, where there is a substantial case load, or a large pool of mediators or a link to the courts, the process tends to be more formalized. For example, the Citizen Complaint Center in Washington, D.C. has their volunteers sign up for a specific evening. On their designated day, the mediator calls in to check if their services are needed. The Salem Massachusetts Mediation Project utilizes both a formal and informal approach to scheduling. They handle a range of cases including small claims and community cases. For all of their cases there is the element of self-selection on the part of the mediator. The mediators have the option to indicate which disputes they are interested in mediating, such as small claims disputes, and those they do not want to handle, such as family cases. The mediators indicating interest in small claims are assigned a day to be at court. Those choosing community cases are selected in a more deliberate fashion, case by case.

At this point, it might be helpful to list the criteria used in a personalized method of scheduling:

OBJECTIVE CRITERIA

- Matching of mediators with disputants in terms of age, ethnic background, sex, etc.
- Teaming a new with an old mediator.
- Availability.
- Unfamiliarity with the parties.
- Rotation--whose turn is it?

SUBJECTIVE CRITERIA

- Choosing mediators with complementary styles.
- Complexity of the case. Some mediators only do well with cut-and-dry cases.
- Type of mediator personality/style case demands. Some cases demand a mediator who is strong and direct; other cases require little direction and are best suited to a more reserved non-directive mediator.
- Pairing of a strong with a weak mediator. Perhaps it is necessary to use someone in order to match certain characteristics of the disputant, despite the fact that the case is complex and the mediator inexperienced. It might be necessary to pair that mediator with a very experienced, highly skilled one.
- Certain people are ideal for certain kinds of cases. This refers back to the training and evaluation: Who is in the pool of mediators and what are their strengths?
- Favoring of multi-skilled mediators.
- Political implications. Are there only certain cases that are appropriate for students to handle based on administrative reservations?
- Intuition. Who would disputants get along with? What is an intake worker's gut feeling about matching a person with a particular case?

What can be gleaned from these criteria is the need to have intake people capable of insightful and intuitive decision making. The forming of the right constellation of people is as important as the mediation process in bringing a conflict to resolution.

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V. WHAT ARE THE ISSUES AFFECTING LONG-TERM OPERATION?

This chapter examines two areas affecting the long-term operation of a campus-based mediation program. The first focuses on the legal issues arising from alternative dispute resolution addressing the questions of confidentiality, liability, and due process as they pertain to a campus-based mediation program. The second concerns program growth and expansion, particularly into related areas such as workshops, training, academic courses, and research.

What Are the Legal Issues Raised by Mediation?

Ironically, some of the very elements that make mediation an attractive model of dispute resolution create the potential legal problems of confidentiality, liability, and due process. Confidentiality and liability are the issues most pressing for college-based programs, while due process is the subject of much debate among community-based programs handling court-referred cases. However, programs using mediation as a vehicle for resolving student disciplinary problems and those interested in future expansion to include court and community disputes, will want to explore due process considerations. The issues of confidentiality and liability from the perspective of a college-based program are focused on first, followed by an examination of the implications of due process for programs handling student disciplinary cases. Finally, there will be a discussion of the significance of due process rights for programs involved with court and community disputes.

Confidentiality

As discussed earlier, confidentiality is the cornerstone of mediation and the very reason why mediation is so successful. It ensures the disputants a

safe place in which to communicate their real feelings and attitudes as well as all relevant information. Although most mediation programs guarantee total confidentiality (a few are required by law or institutional policy to report information on such things as child abuse and honor code violations), there are virtually no federal laws protecting this right and state legislatures are only beginning to address this concern. As a result, there is the potential for self-incrimination and subsequent violation of due process. The fear according to Frederick E. Snyder is that "evidence of a serious unrelated criminal activity" may be disclosed inadvertently during a mediation session. And should the confidentiality of mediation be breached, the information could later serve as a basis for criminal prosecution. The power of mediation lies in the creation of an environment that promotes trust and honest communication. Therefore, it seems important for mediators to explain to the disputing parties at the beginning of a session the consequences of disclosing incriminating statements. Some jurisdictions require anyone who has heard of a past or future crime to inform the police. This concern is not limited to disclosures of criminal activity, but also to the other revelations that colleges have identified as exempt from confidentiality.

The American Bar Association is concerned about the potential breach of this guarantee and the subsequent impact on the effectiveness of mediation. According to Larry Friedman in *Confidentiality, A Closer Look,* the concern has to do with the "issue of whether statements made by participants during an alternative dispute resolution session can be used as evidence at a subsequent legal proceeding." It also involves "the degree to which program records are open to public inspection and thus also available to subsequent litigants." These records include a mediator's notes and copies of the signed agreement.

Currently, certain federal laws exist that could be used to protect statements and agreements from disclosure in court. However, their ability to protect a mediator from testifying or records from being subpoenaed is not definitive. As a result, there has been a push for states to adopt laws protecting the confidentiality of communications made during the mediation of disputes and the work products of the mediators. New York, Oklahoma, California, Florida, Colorado, North Carolina, and Massachusetts are among the states that have

enacted or are considering comprehensive legislation in dispute resolution. For example, New York State, which was one of the first to enact legislation in this field, has a law stating that "all memoranda, work products, or case files of a mediator are confidential and not subject to disclosure in any judicial or administrative proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person present at the dispute resolution shall be a confidential communication." Massachusetts is currently considering two bills that are similar in nature that would protect the confidentiality of both mediation communications and work products. The bills also specifically delineate who qualifies as a mediator and thus, who has a right to this protection. The status of such state legislation should be investigated during early program planning.

In lieu of such legislation, there are some steps that could be taken to circumvent problems arising from this issue. As mentioned in chapter IV, the University of New Hampshire developed an operating policy stating that the mediators couldn't be called to testify against another party. Landlords and tenants were made aware of this condition prior to mediation in case the landlord later chooses to take the case to court because an agreement wasn't reached or the tenant failed to uphold the agreement. However, since there is no state law to support this policy, it is strictly an internal procedure depending on the good will of the participants. In effect, it acts as a deterrent against testimony, not a guarantee. In line with this lack of legal protection, landlords and tenants are permitted to use written agreements as evidence in hearings and trials. If this situation seems likely and problematic, a program might want to eliminate the use of written agreements in the mediation process. Also, a program might want to institute a policy whereby the mediators destroy their notes immediately following a session. In the event that they are called to testify, the absence of notes could help prevent their testimony since they would be unable to recall what transpired in the session.

Several Neighborhood Justice Centers have been subpoenaed to testify and have used a variety of strategies to confront this dilemma. Larry Friedman in the above mentioned publication, outlines the legal action taken by a number of centers in their attempt to quash a subpoena. On a more practical level,

Edith Primm, of the Atlanta Neighborhood Justice Center, has several recommendations for dealing with this issue. First, she feels that mediation programs need a strong and clear policy stating that they will not go to court to testify even if both parties request it. Rather, the agreement reached must speak for itself. Second, the Center permits the presence of attorneys in sessions, as long as they play by the rules of the process. Last and most importantly, she suggests developing a good working relationship with the courts regardless of what kinds of cases a program handles, for every case has legal implications. The Center has been successful in getting subpoenas informally quashed because of established communications. She feels that the groundwork for developing a mutually beneficial relationship, should be laid at the program planning stage. To attempt to develop this network on the heels of a problem is usually ineffectual.

Liability

From the institution's perspective, liability is probably the most serious challenge in running a mediation program. It is a prominent issue because of the in loco parentis role most colleges and universities assume, which carries certain legal responsibilities for the student population. Another factor significantly affecting liability is the climate of litigation that has pervaded college campuses over the last two decades as a result of political activism. To date, there have been no liability law suits due to a mediation, but there are some critical concerns from an administrator's point of view. There are no definitive solutions to these problems, but there are certain steps that a mediation project can take to mitigate the possibility of legal action. Discussed below are the most common concerns and possible preventive steps.

What if a disputant in the course of a mediation reveals their intent to commit a crime such as theft, rape, or arson; or reveals an actual act of criminal behavior?

In the case where an intent is revealed, the mediators should immediately confer with the case coordinator and if all feel that the party is serious in their intent, the mediators should inform the party that if they carry out their threat, as mediators, they would feel morally, and in some states legally, responsible to testify. In order to preserve a commitment to confidentiality, it should

be explicitly stated in the operating policy of the program that this promise does not extend to disclosures of a crime. In a situation involving life-threatening information, Mary Rowe, special assistant to the president, who serves as an in-house mediator at MIT, speaks strongly to working with the disputants until they agree either to seek help if they are talking about a potential crime or to call the campus police if they have committed a crime. It's important to remember that it is the obligation of a mediator to obey the law and not to agree to any settlement that is outside the law. So the real challenge is fulfilling an ethical and legal responsibility that is consonant with a commitment to confidentiality. State laws vary with respect to what criminal information is shielded and not shielded from confidentiality. It would be worth investigating relevant state laws from both angles.

Probably the most difficult decision for a mediator in this predicament is determining what consititutes a dangerous situation. Mary Rowe has developed a set of questions that can guide a mediator in making this decision:

1. Is there a direct threat to others?
2. Does the mediator know of any violent history?
3. Is there a named object of the threat?
4. Is there a named time period?
5. Is there a named method?

For example, if the case involves a father and son with a long history of conflict, including some violent behavior, and the son indicates that he is planning to kill his father and by tomorrow afternoon it will be all over and when asked how he intends to kill his father the disputant says he has a gun, it would appear to be a dangerous situation. Also, there are some state and local laws and statutes calling for a duty to warn the object of the threat. In contrast, if the mediator knows for sure that the disputant has no violent history, is speaking of the distant future, and has no specific plan in mind, the seriousness of the threat would be less worrisome.

How does a college decide to refer a case to mediation rather than prosecute?

For example, the dean of students refers a combative student to mediation and the student subsequently injures another student. Is the dean legally responsible? There is not a clear answer to this question, but it illustrates the importance of skilled intake. First, it would be incumbent upon the administrator to evaluate the history of violent behavior of the student and to assess the future probability. Then the intake worker should be given all the necessary information to aid her in the decision as to whether the case is mediatable. It is then up to the intake worker to do a thorough and insightful interview enabling her to make a careful decision as to whether the level of violence warrants the route of mediation.

Is mediation a right?

For example, a resident assistant has been looking for a clear violation to remove a student from their dorm because of acute personality conflicts. It finally occurs and the student is removed. The student suggests mediation, but the resident assistant refuses because it is not in her interest. Should the power of denial or granting be left to those in positions of authority? To avoid the misuse of mediation and the question of denial of rights, it might serve the college's interest to institute a policy as to what types of cases between students and staff/faculty/administrators will be referred to mediation.

What if a student reveals their intent to commit suicide during a mediation?

Confidentiality would restrict mediators from revealing this information to the administration and yet, if the student did commit suicide, the university could be sued. To deal with this dilemma, a medation program could establish guidelines for mediators dictating that a mediation session be halted once this information is revealed with continuation contingent upon the person seeking professional help. Mary Rowe's method for assessing the seriousness of the threat could also be applied in these circumstances.

What if the case being handled in mediation deals with racial discrimination or sexual harassment and the agreement is broken?

Can the college be sued for not having used stronger sanctions against the offending party? Mediation requires voluntary participation and voluntary

compliance with the agreement. Under certain circumstances, particularly in the absence of state laws, a party may use a mediation agreement as a basis of a breach of contract action. Therefore, the parties who choose mediation as an avenue for settlement do so aware of the lack of sanctioning powers of mediation programs. Also, entering mediation does not prohibit the complainant from taking legal action should they desire.

What if a disputant feels the contract they entered with the mediation program has been broken?

The participants may sue if the contract, expressed or implied, is breached. To prevent this possibility, it is critical that intake workers and mediators make no implied or expressed promises about mediation being a superior form of conflict resolution or about the outcome of the process. If mediation is described as private and confidential, that standard must be adhered to unless there have been explicitly stated exceptions. To limit liability, it might be appropriate for a mediation program to enter into a written contract with their clients. The content could describe the process, the role of the mediator, and the rules governing the mediation session and the agreement.

Due Process

There has been a great deal of discussion and controversy about the relationship of mediation to due process, particularly within the framework of community-based programs handling disputes linked to the courts. Many articles have been written outlining these concerns and although these issues would not manifest in the same way on a college campus, it is important to be familiar with this debate and aware of the implications for a college-based program, especially one working with student disciplinary cases.

As the use of mediation on college campuses has grown, institutions of higher education have been confronted with the need to ensure protection of due process rights for parties involved in a dispute. For example, the courts have ruled that students attending public institutions are guaranteed the due process rights of the right to notice of charges, the right to an impartial hearing, the right to present evidence, the right to cross examine witnesses, and usually,

the right to an advisor of choice in any situation in which disciplinary action is being considered, including cheating.

The fundamental idea behind due process is that of fairness and this principle is particularly compelling for a college running a mediation program. A general tone of fairness is assumed in the judicial process due to the use of legal rules and procedures. Because mediation is a private and less formal structure, there is concern that it may not be a fair process, especially for those in a more vulnerable and less powerful position in a dispute. This party, it is conjectured, may end up signing an agreement that does not reflect their real interests and desires. As mentioned earlier, cases in which there is a clear imbalance of power may be deemed non-mediatable. For those cases in which this issue is more ambiguous, the mediation process can provide some safeguards to protect the less dominant party. Of primary importance is the presence of skilled and knowledgeable mediators who can guide the parties in a realistic evaluation of their positions and desired outcomes. Although most campus-based programs do periodic follow-up after an agreement has been reached, their goal is to obtain a signed agreement at the end of the mediation session. It might be worth re-evaluating this procedure. It has been suggested by Jay Folberg and Alison Taylor in their book, *Mediation: A Comprehensive Guide to Resolving Conflict Without Litigation,* that every mediated agreement should provide for a passage of time before the actual signing so as to allow the parties an opportunity to review their decisions. This procedure could easily be implemented as the last step in the mediation process. (It should be noted that in many court-referred cases, the agreement is subject to the review of the court.)

In student disciplinary cases, fairness can be ensured by advising students of the legal implications of mediating their cases. For example, the Legal Services Office at UMass describes the process of mediation to any student who consults them prior to mediation, specifically with respect to confidentiality. The student is informed that the mediators have taken an oath of confidentiality, but to realize that this protection would only apply in an individual session between the student and the mediators. In a joint session, the other party is privy to the information and is in no way bound to confidentiality, due to current lack of state legislation guaranteeing confidentiality for all mediation

communications. The Office also outlines the possible outcomes of resolving the dispute in mediation vs. resolving it in court. It's critical that the parties in such a dispute bargain from a knowledgeable legal position.

A final check of fairness is inherent in the very nature of mediation because it is a collaborative model of conflict resolution which fosters cooperation and fairness between people. Mediation is premised on the idea that people are capable of bargaining in good faith, of coming to their own decisions, and of arriving at a just result through their own negotiations. Much of the conflict that arises in a college setting is not appropriate for court resolution and everyone involved is better served through a non-adversarial approach.

From the vantage point of programs handling divorce, environmental, criminal, and civil conflicts, the due process concern can be summarized as that of diverting cases that would normally be processed in the public setting of a courtroom accompanied by the right to counsel, a notice of charges, a right to an impartial hearing by a jury, and the opportunity to hear and present evidence to the private setting of a mediation session which is not bound by any rules of procedure. The underlying fear here is that of creating a second-class system of justice, particularly for those who have traditionally lacked access to the judicial system.

As the debate has swelled, programs involved with court and community cases have developed procedures within the mediation process to protect these due process rights. For example, take the right to an impartial hearing. Protection of this right occurs through the very essence of a mediation session, its impartiality and voluntary participation. In order for a mediator to be effective, she must convince the disputants of her neutrality. In order for the disputants to arrive at a mutally agreed upon solution with the prospect of long-term compliance, they must willingly and by free choice participate in the process. As long as participation is voluntary, disputants have the right to determine for themselves whether the process is impartial. If at any point, one or both parties feel that mediation is not impartial, they are free to return to other routes of redress and resolution, as they have not waived any of their legal rights. In cases stemming from criminal or civil complaints, it is especially important that parties operate with a clear understanding of their voluntary involvement and that they in no way feel coerced into mediation. For example, the Agreement

to Mediate provided by the local Office of the District Attorney clearly states the strictly voluntary nature of mediation and the right of the disputants to choose not to proceed with the process and to return to the District Court where the charges originated. In student discipline cases on campuses, the same right is granted of returning to the student judicial system.

When we realize that ninety percent of all court cases are settled outside the courtroom and and many more never get to court because of the financial and emotional expense, the fear of creating a second-class system of justice seems unfounded. It is more likely that mediation has the potential to protect the rights of everyone, not just those who have had historical access to the legal system.

The Why, When, and What of Program Expansion

As noted previously, the UMass Mediation Project is atypical of campus-based mediation programs in that it functions as a separate program with its own paid staff. Still, its pattern of growth and program activity provides a useful base for discussing expansion options. The experience of the UMass Mediation Project is used to explore some of the more important aspects of program growth: 1) why do it; 2) when to do it; and 3) what to consider in choosing a new direction.

The initial aim of the program was to mediate disputes. In the first year, the Project trained 28 people to serve as mediators. However, with under 15 cases actually mediated, intake and mediation did not require the full time and attention of the staff or mediator pool. As a result, the project expanded its activities by conducting mediation workshops for important campus groups and offices. For example, workshops were held for heads of residences and for staff in the Dean of Students Office. Five years later, the expansion of mediation cases to an average of two per week throughout the year, accompanied by a large increase in the mediator pool, has led to changes and reductions to this component. Recently, the Project's case load has expanded dramatically. As demands for intake, case coordination, case follow-up, and case scheduling rise, the amount of time available for conducting campus workshops is harder

to find. Also, since more staff at higher administrative levels are being trained as mediators for the Project, there is less need for the kind of workshops initially offered. Within the first few years the Project had introduced mediation to those offices and departments whose personnel could best use mediation skills or would be in positions to make referrals to the mediation program. Thus, in an important sense, the campus workshop component has met its most important purposes from both institutional and program perspectives.

During this same time, demand for training by other campuses has grown enormously. The staff has reorganized to allow for more response to these demands and the off-campus training service has been born. Several factors made expansion into this type of consulting and training possible. First, the requests came at a point where the Project's procedures were well established. The staff knew what they were doing, why they were doing it, and what was required to maintain effective functioning. Because of this, the Project's coordinator and/or director could be away without negatively impacting the Project's functioning. Second, the Project's coordinator had been with the Project from the beginning. Thus, the Project had a staff member experienced in the details of program start up and mediation training who could work with other campuses. Third, having created various types of training, the Project was experienced in designing training to meet specific needs. Although this aspect of the Project's activities has grown, staff cannot keep pace with the demands. This was one reason for seeking funds to support the writing of this manual.

From its inception, the Mediation Project intended to have a research component. At first, the Mediation Project anticipated that the program would generate research of interest to the University's faculty and colleagues in the ADR field. However, demands for other direct services left little time to initiate research projects until two years ago when the dean of students gave the Project funding to support a research assistant. That enabled the Project to undertake a very useful study of conflict and conflict resolution in the dormitories. While this study was being completed, faculty awareness of the Mediation Project grew. As a result of faculty requests, two collaborative research projects are underway. In these instances, the Mediation Project provides a means for faculty and graduate students to investigate questions pertinent to their

own field while generating data of use to the ADR field and the Mediation Project as well. The research of the Communication Studies faculty and students described in the section on evaluation is one example. The Mediation Project was committed to the idea of including research in its activities from the beginning. But outside interest and "demand" has been the stimulus for actual realization of the goal.

Affiliation with the courts was another original intention that took several years to be realized. Again, the new program focus was added only when demand supported the original goal. It was through a Project-trained mediator in the District Attorney's Victim-Witness Program that demand for mediation services was generated within the court system. That request for services provided the basis for pursuing the court referral component.

Although courses had been offered in mediation and alternative dispute resolution through the Legal Studies undergraduate major prior to the official operation of the Mediation Project, there was no formal relationship between these courses and the Project in the beginning. Now, many Legal Studies courses use mediators and staff from the Mediation Project to demonstrate mediation processes and techniques through simulations. Additionally, over the years the demand for mediation simulations in sociology, anthropology, psychology, education, and business courses has grown. Providing this service to faculty is useful to the program in two ways. First, it allows the program to educate increasing numbers of faculty and students about mediation and the Mediation Project. Second, it provides volunteer mediators with additional opportunities to practice their skills. This is especially useful in enhancing the skills and confidence of newly trained mediators. Because of the nature of this service, it can expand or contract easily as demand and time available change. The Project is also expanding its academic component through a special faculty seminar sponsored by the Institute for the Advanced Study in the Humanities. The seminar, which will be attended by faculty from five area colleges and universities, will be conducted by the Project's director and the campus's ombudsperson, both faculty members at the University and mediators and trainers for the Project. The seminar is likely to affect both the inclusion of mediation material in more courses and the involvement of faculty in various disciplines in research

using the mediation setting.

Other services offered by the Mediation Project have come about in response to repeated or compelling requests. For example, the Project has found itself providing services in facilitating meetings, mediating large, multi-group campus community disputes, and organizing mediation services for the local schools. These were not part of the original design of the Project, but they have become part of its work as it has grown.

As these examples of expansion show, demand is a major factor in determining when, why, and how to expand or change services. When services are demanded, funding can be justified more easily. Or, where appropriate, demand may make fees for services feasible. As suggested by the example of expansion to work with the courts, awareness of the need and interest in meeting that need are often insufficient to bring about a new program component. Need and interest coupled with demand, however, lead to successful expansion. The court expansion also demonstrates the way in which mediator training can be an important factor in program growth and development.

Conditions of underutilization also provide the impetus to expand. Internally, underutilization of staff and services--whether paid or volunteer--is demoralizing. Externally, low usage suggests that administrative or budgetary support is not warranted. **Since most programs are substantially underutilized in their first year of operation** (a point worth making to both the trained mediators and those providing financial support), it makes sense to have some contingency services ready for implementation. At the UMass Mediation Project, the choice was to provide mediation information to key staff in the departments and offices most likely to need mediation skills or to become aware of disputes appropriately referred to mediation. This was a highly visible and quantifiable activity that provided a clear, justifiable service to the campus. It also afforded an excellent means of establishing the program's presence and reputation. Finally, it was a means of developing future referrals. Even here, however, the expansion into training of campus groups worked only because there was demand for such training following the initial training of mediators. Again, underutilization of services alone is insufficient to direct expansion efforts.

Another basis for expansion is the need or desire to reach a different target

population or different types of cases. When the mediation program at the University of New Hampshire was first formed, it had as a goal providing services to all students. It began by working only with commuting students. Having established a successful program with this group, the program is now ready to expand services to residential students. Rather than being reactive to a demand, this expansion is being carefully planned, in a way similar to the initial start up of the program. At UMass, service to the courts had been part of the original design. When it became possible to actually obtain referrals from the court, mediators had to be trained to handle the special aspects of court-referred cases. In both this situation and that at UNH, the expansion was one having a lasting impact on case development, case load, types of cases, and mediator selection and training. Once developed, this type of expansion is not easily cut back. As a result, such expansion must be carefully weighed. Too, this type of program expansion represents a greater risk of failure than other types of change. Outreach to new groups represents a large commitment of time and energy and is usually well publicized. Lack of success may also be more public and therefore, more threatening to a program's credibility.

One final motivation for expanding a program's services is the need for broader or increased program credibility. If a program were successfully mediating two-party student disputes, but the program had intended to serve the entire campus community, a new program component might be introduced to promote credibility among those groups not currently using the services. For example, providing simulations in classes might be offered as a service to faculty. By selecting simulations showing conflicts between students and faculty, faculty and staff, or two faculty members, the program might begin to broaden the program's image. By taking on more public roles, such as facilitating campus meetings on controversial subjects and mediating public disputes between campus groups and organizations, the UMass Mediation Project has established credibility for handling multi-party, multi-issue disputes, and is not limited, in image, to two-party interpersonal disputes.

In deciding whether or not to expand into any one of the possible arenas--training, research, academic courses, simulations for classes, new target populations, or types of cases--there are several basic considerations. First, can the program

afford the desired expansion? Is there the staff time and expertise, whether voluntary or paid, to plan and implement the new component? Second, will the expansion have a long-term impact on the overall program? Can the new component be easily eliminated or reduced as other aspects of the program change? For example, if the number of cases to be mediated increases, what impact will that have on the new component? Likewise, what impact will the new component have on case development? Third, will the expansion aid the primary mission and goals of the mediation program? Finally, is there evidence of demand for the new component? The answers to these and related questions provide the basis for decisions about expanding program sevices and changing focus in program activities.

VI. CASE STUDIES

This chapter presents a range of cases that have actually been mediated on college campuses. The purpose is to familiarize planners with both the types of issues that can be handled effectively by mediation and the strategies used throughout the process, from intake to agreement.

Case Study: Staff/Staff

Referral Process and Intake

The Mediation Project was contacted by a professional staff member of a service agency on campus in early March. Angela had been informed by her supervisor, the director of the agency, that her contract might not be renewed. She had gotten this information in December and there had already been a long series of letters between the two. Additionally, the staff member had contacted the University ombudsperson and the professional employees' association and had retained a lawyer. She asserted that her personnel evaluations up to this year had been excellent and that the University administrator on the next level above the agency director had "made up his own set of evaluations" of the staff and that hers had been positive. During the intake interview, the staff member told the case coordinator that two other people, Rene and Vera, in the agency, also faced non-renewal of their contracts. The case coordinator asked if these other staff members should be involved and received a positive response. The original complainant, Angela, said that she would ask Rene and Vera if they wanted to mediate and would also tell her supervisor that she wanted to mediate. The agency director came to the Mediation Project for an intake appointment and stated that she was willing to mediate with Angela and Rene, but separately. She said that in her opinion, Vera would not agree to mediate as she was at the second level of an official grievance procedure and thus, well beyond the "informal settlement" stage. The director

also stated that she was "pretty firm" on personnel decisions and wasn't sure that there was much leeway for negotiation.

Toward the end of the month, the director formally wrote to Angela and Vera saying that it was her intention "not to re-appoint" either of them. Angela then called the Mediation Project and said that she didn't want to mediate anymore and that she intended to pursue the matter through more formal channels. Two weeks later, she followed up this phone conversation with a letter stating that she was proceeding with the second step of the University's grievance procedure due to the director's refusal to try and resolve the situation. Copies of this letter were sent to the University ombudsperson, the professional employees' association, the staff member's lawyer, and several high level University administrators.

Vera, who was already involved in a grievance, began to rally support for her case by calling friends and former work associates asking them for letters and calls of support. She also spoke to the local paper about her work situation specifically and the supervisory situation in the agency generally. The agency director wrote to Rene, who was going to be re-appointed, to say that she was "looking forward to mediating their work situation." At this point, there began a series of phone calls between the director, Rene, and the Mediation Project in which the disputants changed appointment times, failed to return phone calls, etc.

Mediator Selection

Two mediators were selected to mediate this case. Since the disputants were both female, both mediators were female. The intake coordinator also thought that it would be important for the mediators to be from outside the University, given that the issue was so controversial and sensitive within the campus. One mediator was white, the other black, to match the racial mix of the disputants. Both mediators held professional positions. The intake coordinator did not think that the mediators had to reflect the type of positions held by the disputants, but she did think that it would be important for the mediators to be familiar with standards for professional performance and supervision.

Mediation Sessions Summaries

Finally, in early April the first mediation session was held. The session lasted roughly two hours. There was a public session lasting approximately 45 minutes, and two private sessions. The mediators saw the staff member individually for almost an hour and then saw the director privately for a brief session. The major issues that emerged at this point concerned exactly what kind and how much documentation the staff member needed to give to the director concerning some projects she was doing outside the agency. It also came out during the mediation session that the staff member did not have a specific job description, but only a rather general statement of duties. Further, because of Rene's educational activities outside the agency, she had an off-campus group to which she felt responsible. One of her goals in mediation was to get the director to acknowledge this outside group who depended upon her work and supported it. Finally, the director was concerned that there were some irregularities in the staff member's record keeping as regards budget expenditures, travel expenses, and hours. Because of the complexity of this case, the first session focused on building trust and discovering the issues. The mediators pointed out to both parties, at the end of the session, that lack of clarity concerning duties and expectations was problematic for both of them, and they asked the disputants to try to think of some specific suggestions to make each person's role clearer.

In the second session, the staff member brought in some papers and a journal which made the director feel somewhat reassured on the question of record keeeping. The staff member also told the mediators that she was confused by and impatient with much of the bureaucracy at the University and this is what led to her "irregular" record keeping. The mediators shared this information with the director who offered to help the staff member by setting aside supervision time between them to discuss **in advance** any situations or activities which might lead to problems. The director also, with the help of the mediators, began to outline the specific pieces of record keeping that she felt were absolutely necessary. Once these specifics were out, it was possible for the mediators to present them non-judgmentally to the staff member. At this point, the

staff member had to come to grips with three things: 1) it was the director's "bottom line" that she improve her record keeping; 2) the specifics of this demand were now out on the table and thus, subject to some negotiation with regard to implementation; this meant that the staff member could begin to take some control over the situation; and 3) the director had given a specific promise to help and support the staff member on this issue.

In turn, the director needed to come to terms with the validity of the staff member's off-campus group. The mediators presented this issue to the director by discussing with her the importance of the staff member's educational activities outside the agency. The director felt these were an essential part of the job. At this point, the mediators told the director what the staff member had said about the importance of this off-campus group in her work. Since Rene had told the mediators that she would like the director to become more involved with this group, and since one of the major issues of the mediation was accountability, the mediators were able to reframe what had been a demand—'recognize my outside group'—as an invitation to the director to become more closely involved with her staff member's work.

Synopsis of the Agreement

The director agreed to give help and support to the staff member with her record keeping, as well as to make clear what was expected of her in terms of record keeping. The staff member agreed to improve her record keeping in line with the director's expectations. The director also agreed to become more involved with the staff member's work outside the agency. The final part of the agreement was a sentence stating that their written mediation agreement would be attached to Rene's contract. This was a way for both parties to formalize their agreement and emphasize its seriousness. It was also a way for them to integrate the formal personnel procedures of the University with the alternative process of mediation.

Follow-up

Follow-up with both parties indicated that they had gone over their agreement

during supervision meetings and that it was being upheld and that things were "working very well."

This case was written up by Eileen Stewart of the University of Massachusetts Mediation Project.

Case Study: Landlord/Tenant

Referral Process and Intake

Sarah Moore, a manager of a large apartment complex, contacted the Mediation Project in April. A former tenant, John Smith, had moved out of his apartment during Christmas break. John had signed a nine-month lease in the fall which stipulated that rent was paid by the semester. John had told Sarah, three weeks before the break, of his plans to leave. John owed Sarah approximately $700 in unpaid rent. Sarah had not been able to rent John's room and according to the lease, he was legally responsible for rent payments. Sarah had been through mediation before with previous tenants.

The mediation coordinator called John and discussed the possibility of mediation with him. John wanted to involve his parents in the mediation process. The coordinator sensed that any decisions regarding John's money matters were controlled by his parents. The coordinator spoke with John's mother, Marilyn. Marilyn said that they would not pay the $700, but because they did not wish to go to court, they would participate in a mediation session.

Mediator Selection

A man and a woman were selected for the mediation team. In determining the mediators, the case coordinator felt it was important to match the age and sexes of the disputing parties.

Mediation Session Summary

In addition to the $700 rent that John owed for the second semester's rent, Sarah wanted John to pay for a broken window she had discovered when she went to look at the apartment right after John had left. Sarah had used John's

security deposit to clean his room. According to Sarah, John "left his room looking like a pig's pen."

Sarah had recently been to court with a similar case and the court ruled in her favor, but reduced the charge by $300. To facilitate the mediation process and avoid going to court, Sarah was willing to drop the money owed by John and his parents to $486.

At the beginning of the joint session, Sarah announced to the Smiths that this was her bottom line. Throughout the mediation session, this bottom-line position remained firm and an obstacle for the Smiths and the mediators. The mediators recognized that Sarah's clear pronouncement gave the Smiths no control or power over the terms of a resolution. This imbalance of power created an atmosphere of a win/lose situation. There was nothing to barter and both parties maintained their original positions. The Smiths refused to accept Sarah's offer.

When the Smiths began to ask questions about the exact cost of the window, the lack of information regarding replacement cost was able to move the dispute out of a deadlock. This information gap was the leverage the Smiths needed to gain a sense of movement toward an agreement. From their perspective, the issue became not whether they owed the money, but what the final figure should be. The final figure could not be determined until the next day when Sarah went back to her office. Both parties agreed not to agree on a final dollar amount until Sarah came up with the cost of the window repair.

Synopsis of Agreement

Sarah agreed to call the case coordinator the next day with information on the window. The price for the window amounted to $16. Sarah decided to forfeit the $16, thereby reducing the final figure to $470. The Smiths agreed to call the case coordinator the following day to find out the final figure. Upon hearing of Sarah's offer to reduce the payment to $470, they agreed to pay.

Follow-up

The Smiths' payment was due on September 1. Sarah received payment by the due date.

This case was written by Maggie Morrison of the University of New Hampshire Mediation Project.

Case Study: Student/Faculty

Referral Process and Intake

The Mediation Project was contacted by two students who had complaints about a faculty member. One student was a foreign graduate student and the other was an undergraduate from this country. They were friends and had shared with each other their concerns and decided to do something together about a problem as they saw it. The graduate student explained that he had been involved in several heated arguments with the professor, both in and out of class. He felt that he was being mistreated because he was a foreigner. Specifically, he claimed that the professor asked him inappropriate questions in class and graded him unfairly because of his "bias against foreign students." He said that the tensions had culminated in a shouting match in the faculty member's office. He claimed that they had both pushed each other. The intake worker asked him what he wanted from the mediation process. He said that he wanted an apology, a review of his grades, and for the chair of the department to be notified of the faculty member's behavior.

The undergraduate student explained that his complaint involved an overdue book from the library. He said that the faculty member was his advisor and that he worked with him in an independent study course a year and a half previously. During that course, the faculty member took out a book from the library in his name for the student's use. The student said that he put the book on the professor's desk when he was finished with it, expecting the professor to return it to the library. The student said the book was never returned, was somehow lost, and the professor was expecting him to pay the $25 charge for lost books. The student said he had been under severe stress at that point

in his life and had left school for a semester after his independent study course. He felt the professor had no understanding of the situation. He wanted the professor to pay for the book and to stop bothering him, for he felt that his behavior was recreating the stressful environment he had sought to escape.

The intake worker asked both students if they had spoken to the professor about mediation. They said they had not, but had both gone to the chair who encouraged them to work it out informally.

The intake worker contacted the faculty member who agreed, somewhat reluctantly, to come to the Mediation Project to discuss the situation. At this interview, he indicated his anger at the graduate student. He said that the student had a nasty temper and would flare up, both in and out of class, for no apparent reason. He said that the student had punched him and he wanted an apology for that. He said that the student did good work and had received reasonably good grades, but that his "temperamental episodes" made it hard for him to deal with the student. He said that he was quite concerned about the undergraduate student's emotional well-being and explained that he had spent a lot of time with him in the past years, more than the usual amount. He wanted to help him finish his studies but did not feel responsible for the payment of the lost book which he said he never saw on his desk. He agreed to mediate the problem because he said he saw himself as a reasonable person, concerned for the student's welfare. His goal of the mediation process was to gain clarification of the situation.

Mediator Selection

Two mediators were selected to mediate the case; one was a faculty member, unknown to the parties, and the other a student. This assignment was made since it was clear that the mediators needed to have credibility from both sides and that the faculty member might not have gone through the process unless one of the third parties with this stature was selected. The students, it was felt, would have been satisfied with any neutral disinterested third party. The intake worker, nevertheless, thought it was important to have the balance of a student mediator paired with the faculty member.

Mediator Session Summary

The mediation session took place a week after the intake interviews. The session lasted for 2-1/2 hours. The joint session took approximately 1-1/2 hours. The discussion here focused primarily on the emotional and communicative aspects of the dispute. The faculty member emphasized his concern about both students and his desire to come to a resolution. He also indicated how angry he was at the graduate student for what he described as "abusive behavior." He said he was sorry if he had made the student feel uncomfortable for that had not been his intention. He explained why he had a hard time with this student's outbursts. The professor also said that he was very concerned about the undergraduate's situation and that he felt he had made special attempts to help the student. He said, however, that he would not pay for the book which he believed the student had lost.

The mediators then spoke with all of the parties separately for approximately 45 minutes. During these conversations, it became clear that they all began to appreciate some of the things each had done to create the tense situation.

Synopsis of Agreement

The final joint session lasted for 15 minutes in which the mediators explained what the parties had agreed to and carefully went over what the points of disagreement were about the library book. The graduate student agreed to apologize for his behavior and for hitting the professor. The professor agreed to be more sensitive to the pressures this student was under and offered to do extra work with him to assist him for his exams. The undergraduate student acknowledged that the professor had tried to help him when he was in a "crisis situation" but felt that he should not be responsible for the book. The professor expressed his concern and desire to help this student but would not pay for the book.

Follow-up

Follow-up with all the parties indicated that the undergraduate student had paid for the book and was nevertheless feeling much better about the professor

since the mediation. Similarly, the graduate student and the professor indicated that they were working well with each other.

This case was written by Janet Rifkin of the University of Massachusetts Mediation Project.

RESOURCES

This section lists the people and print resources that were used in writing this manual and that should prove valuable in learning more about the various focuses, issues, and approaches in campus and community-based mediation. Print materials are listed in alphabetical order by title. Trainers and training centers are listed alphabetically in a separate section.

Print Resources

Alternative Dispute Resolution: Who's in Charge of Mediation?, compiled by The Special Committee on Alternative Means of Dispute Resolution, Panel Discussion Series, Topic 2, (Washington D.C.: American Bar Association, 1982).

"An Integrated Academic/Court Mediation Project for Western Massachusetts," Legal Studies Department, University of Massachusetts/Amherst, 1980.

An Introduction to Mediation: A Manual for Beginning Mediators, Joseph B. Stulberg and J. Michael Keating, (Conflict Management Resources, 1983).

"Citizen Dispute Settlement: A Mediator's Manual," Joseph B. Stulberg with Michael L. Bridenback, Supreme Court of Florida, Tallahassee, Florida, 1981.

"Conciliation Programs at Colleges and Universities: Adaptation of Community Boards to Meet Campus Needs," Maria Sakovich, (San Francisco: Community Board Center for Policy and Training, October, 1983).

"Conflict and Mediation in the Academy," Jane E. McCarthy, New Directions, Jane E. McCarthy, ed., 1980, pp. 2-8.

"Confidentiality: A Closer Look," Larry Friedman, Alternative Dispute Resolution: Mediation and the Law, ABA Special Committee on Dispute Resolution of the Public Services Division, (Washington, D.C.: American Bar Association, 1984).

"Crime and Community Mediation - The Boston Experience: A Preliminary Report on the Dorchester Urban Court Program," Wisconsin Law Review, 1978, pp. 737-795.

"Ethical, Professional and Legal Issues," Jay Folberg and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation, (San Francisco: Jossey-Bass, 1984), pp. 244-290.

Getting to Yes: Negotiating Agreement Without Giving In, Roger Fisher and William Ury, (Penguin Books, 1981).

Houston, Texas Dispute Intake and Referral Center, Multi-Door Dispute Resolution Center, November, 1984.

"How to Stay Out of Court," Evan Thomas, Money, May, 1983, pp. 177-182.

"Justice Without Judges," Albie Davis, Update on Law-Related Education, volume 9, number 1, (Chicago: American Bar Association, Fall, 1984).

"Legal Implications of Mediation," Frederick E. Snyder, Perspective, Fall/Winter, 1979, pp. 15-17.

"Legal Issues Arising in Mediation: The Boston Municipal Court Mediation Program," Robert E. McGinnis and R. J. Cinquegrana, Massachusetts Law Review, Fall 1982, pp. 123-134.

"Legal Studies and Mediation: An Academic/Public Model of Conflict Resolution," Peter d'Errico, Ethan Katsh, Janet Rifkin, Resolving Conflicts in Higher Education, New Directions in Higher Education Series, (San Francisco: Jossey-Bass, 1980).

"Limiting the 'Pursuit of Perfect Justice' on Campus: A Proposed Code of Student Conduct," Gary Pavela, Journal of College and University Law, volume 6, 1979-80, pp. 137-160.

"Mediation at Oberlin," George Langeler, presented at ACPA, Baltimore, Maryland, April, 1984.

"Mediation Paradigms and Professional Identities," John Lande, Mediation, Quarterly, John Allen Lemmon, ed., number 4, (San Francisco: Jossey-Bass, June, 1984).

"Mediation: Reducing Dependence on Lawyers and Courts to Achieve Justice," Gary Friedman, The People's Law Review, Ralph Warner, ed., (Reading, Massachusetts: Addison-Wesley Publishing Company, a Nolo Press Book, 1980).

Mediation Techniques: A Manual for Mediators, University of Massachusetts Mediation Project and Mediation Associates of Western Massachusetts, 1984.

"Mediation—The Concept and the Process," Richard A. Salem, Presented at "Solving Disputes in the 1980's," sponsored by the American Arbitration Association Dispute Mediation Service of Dallas, Inc., Dallas, Texas, June, 1983.

Neighborhood Justice Centers: An Analysis of Potential Models, Daniel McGillis and Joan Mullen, U.S. Department of Justice, 1977.

"Neighborhood Justice Systems: Work, Structure, and Guiding Principles," Raymond Shonholtz, Mediation Quarterly, John Allen Lemmon, ed., number 5, (San Francisco: Jossey-Bass, September, 1984).

Negotiation Mediation, Christopher W. Moore, (Denver: Center for Dispute Resolution, 1983).

"Quiet Victories on the Mediation Front," Diane Camper, Perspectives, Summer, 1983, pp. 36-39.

"Report on Graduate and Undergraduate Programs in Conflict Resolution," Neil Katz, (Washington, D.C.: National Institute for Dispute Resolution, September, 1984).

"Resolving Disputes: The Choice is Ours," Albie Davis and Richard A. Salem, UPDATE on Law-Related Education, volume 9, number 2, (Chicago: American Bar Association, Spring, 1985).

"The Balancing Act of Mediation Training," Peter S. Adler, Training and Development Journal, July, 1984

The Community Conflict Resolution Training Manual, the Community Board Program, Inc., San Francisco, 1984.

The Mediator's Handbook, W. Richard Evarts, James L. Greenstone, Gary J. Kirkpatrick and Sharon C. Leviton, (Dubuque, Iowa: Kendall/Hunt Publishing Company, 1983).

"The Varieties of Dispute Processing," Frank E. A. Sander, The Pound Conference, 70 F. R. D., 1979.

People Resources for Mediation Training

Center for Collaborative Problem Solving
2822 Van Ness Avenue
San Francisco, CA 94109

Center for Community Justice
918 16th Street, N.W., Suite 503
Washington, D.C. 20006

Center for Dispute Resolution
430 West Ninth Avenue
Denver, CO 80302

Center for Mediation in Higher Education
American Arbitration Association
140 West 51st Street, 10th floor
New York, NY 10020

Children's Hearing Project
99 Bishop Allen Drive
Cambridge, MA 02139

Community Board Center for Policy and Training
149 Ninth Street
San Francisco, CA 94103

Community Relations Service
Department of Justice
5550 Friendship Boulevard
Chevy Chase, MD 20815

Conflict Management Resources, Inc.
61 West 62nd Street
New York, NY 10023

Crime and Justice Foundation
19 Temple Place
Boston, MA 02108

Dispute Resolution Center
1106 James Hall
Brooklyn College
Brooklyn, NY 11210

Dispute Services
Oklahoma State University
Stillwater, OK 74078

Institute for Mediation and Conflict Resolution
49 East 68th Street
New York, NY 10021

Interaction Associates, Inc.
185 Berry Street Suite 150
San Francisco, CA 94107

124 Mount Auburn Street
Cambridge, MA 02138

Mediation Trainers and Consultants of Boston
45 Fendal Avenue
Dorchester, MA 02124

National Center for Collaborative Planning and Community Services
P. O. Box 1080
Montpelier, VT 05602

Neighborhood Justice Center of Atlanta
1118 Euclid Avenue N.E.
Atlanta, GA 30307

Neighborhood Justice Center of Honolulu
1270 Emma Street, #402
Honolulu, HI 96813

The Center for Dispute Settlement, Inc.
67 Chestnut Street
Rochester, NY 14604

U/Mass Mediation Project
University of Massachusetts
425 Amity Street
Amherst, MA 01002

Urban Court Mediation
138 Templeton Street
Dorchester, MA 02124

APPENDIX A: TRAINEE EVALUATIONS

Name of Trainee: Date:

Task	Competence Level: Demonstrates Competence	Needs to Improve	Shows Serious Weakness	Impossible to evaluate
Establishing trust				
Introduction:				
Understands and accurately describes mediation	____	____	____	____
Understands and accurately describes role of mediator	____	____	____	____
Joint Session:				
Uses clear, concise language	____	____	____	____
Asks non-threatening questions	____	____	____	____
Has respectful and attentive demeanor	____	____	____	____
Establishes and maintains neutrality	____	____	____	____
Listens actively	____	____	____	____
Understanding the situation				
Elicits facts	____	____	____	____
Elicits feelings	____	____	____	____
Follows a clear line of questioning	____	____	____	____
Keeps joint session orderly	____	____	____	____
Gets public position	____	____	____	____
Allows for ventilation	____	____	____	____
Clearly organizes facts and interests	____	____	____	____
Team work				
Plans clear strategy	____	____	____	____
Contributes to caucus	____	____	____	____
Takes and uses notes	____	____	____	____
Anticipates difficulties	____	____	____	____

Task	Demonstrates Competence	Needs to Improve	Shows Serious Weakness	Impossible to evaluate
Managing the Negotiation				
Elicits and stresses positives	____	____	____	____
Clarifies facts and issues	____	____	____	____
Helps parties prioritize concerns	____	____	____	____
Transmits information carefully	____	____	____	____
Uses careful timing when ordering points of discussion	____	____	____	____
Gets specific details of proposals	____	____	____	____
Refrains from suggestions by eliciting solutions from parties	____	____	____	____
Understands parties' underlying issues and interests	____	____	____	____
Uses softening techniques				
--stroking	____	____	____	____
--hypothetical	____	____	____	____
--stressing consequences	____	____	____	____
--agent of reality	____	____	____	____
Uses non-judgmental language at all times	____	____	____	____
Is able to see validity of both sides	____	____	____	____
Exhibits patience by not rushing to resolution	____	____	____	____
Brings objectivity to discussion	____	____	____	____
Constructs agreements that are clear, balanced, non-judgmental, and diplomatic	____	____	____	____

Comments:

APPENDIX B: INTAKE FORM

INTAKE STAFF PERSON/CALL TAKER _____

CASE #

CALLER'S NAME: _____ DATE: _____

ADDRESS: _____ TELEPHONE: ( ) _____

_____ STUDENT: YES NO

REFERRED BY: _____

DESCRIPTION OF SITUATION: _____

_____

_____

_____

_____

_____

_____

_____

OTHER PARTY(IES)

NAME: _____ NAME: _____

ADDRESS: _____ ADDRESS: _____

_____ _____

TELEPHONE: ( ) _____ TELEPHONE: ( ) _____

STUDENT: YES NO STUDENT: YES NO

DO WE NEED TO CONTACT THE OTHER PARTY? YES NO MAYBE

OTHER RELEVANT INFORMATION FROM CALL: _____

_____

_____

_____

_____

PREVIOUS INTERVENTION-LEGAL OR OTHERWISE: _____

_____

_____

_____

MEDIATORS ASSIGNED TO CASE: _____